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SUPREME COURT OF THE UNITED STATES.

No. 28.

DUNCAN McARTHUR, PLAINTIFF IN ERROR,

VERSUS

WESLEY S. PORTER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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The United States of America to the Honorable the Judges of the Circuit Court of the United States for the Seventh Circuit and District of Ohio, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action of ejectment which was in the said court, between the lessee of Wesley S. Porter, plaintiff, and Duncan McArthur, defendant, manifest error hath intervened, as it is said, to the great damage of the said Duncan McArthur, as by his complaint we are informed, and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the Judges of the Supreme Court of the United States, on the first day of the

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next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the Honorable John Marshall, Chief Justice of the United States of America, this 28th day of July, in the year of our Lord one thousand eight hundred and twenty-nine, and in the fifty-fourth year of the American independence.

Attest: WM. KEY BOND, *Clerk.*

July 28, 1829.—I, John M'Lean, one of the Associate Judges of the Supreme Court of the United States, do allow this writ of error. Witness my hand and seal. JOHN M'LEAN, [SEAL]

The United States of America—Supreme Court of the United States to the lessee of Wesley S. Porter, greeting:

Whereas Duncan McArthur obtained the allowance of our writ of error to the circuit court of the United States for the seventh circuit and district of Ohio directed, to remove into the said Supreme Court, to be holden at the City of Washington on the Monday in the month of January next, the record of a certain plaint, process, proceedings, and judgment, in an action of ejectment, wherein you, the said lessee of Wesley S. Porter, in that action lately recovered against the said Duncan McArthur, and costs, as by the said record, in the said circuit court and district aforesaid remaining, appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Duncan McArthur we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be; you are, therefore, hereby commanded and cited to be and appear before the Judges of the said Supreme Court, at the City of Washington, at the next term of said court, to be holden on the Monday in the month of January next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable John McLean, an associate Justice of the Supreme Court of the United States of America, this 28th of July, in the year of our Lord one thousand eight hundred and twenty-nine, and in the year of the American independence.

Attest: JOHN McLEAN.

I acknowledge service of the within. July 29, 1829.

T. EWING,
Attorney for Wesley S. Porter.

Pleas begun and held at the court house in Columbus, on Monday the thirteenth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, and of the Independence of the United States the fifty-fourth, before the Honorable John McLean and John W. Campbell, Judges of the circuit court of the United States in and for the seventh circuit and district of Ohio.

LESSEE OF WESLEY S. PORTER
vs.
DUNCAN MCARTHUR. } *Ejectment.*

Be it remembered, that heretofore, to wit, at the January term of said court, in the year of our Lord one thousand eight hundred and twenty-two, and of the forty-sixth year of the American independence, came John Stiles, on the demise of Wesley Shipley Porter, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, and filed a certain declaration in an action of ejectment against Thomas Nokes, a citizen of and resident in the State of Ohio, which is in the words and figures following, to wit: United States' circuit court for the seventh circuit within and for the district of Ohio, of the term of January, in the year of our Lord one thousand eight hundred and twenty-two, Ohio district. John Stiles, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, complains of Thomas Nokes, a citizen of and resident in the State of Ohio, in custody, &c. of a plea of trespass, with force and arms, &c. for that whereas Wesley Shipley Porter, an infant and sole heir of George Porter, deceased, by Sarah Porter, his mother and next friend, said Wesley and Sarah being citizens of and residents in the said State of Maryland, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-one, at the county of Ross, in the said district, and within the jurisdiction of this court, had demised, granted, and to farm let to the said John Stiles, all that tract or parcel of land, situate, lying, and being in the said county of Ross, and within the district and jurisdiction aforesaid, and described as follows, to wit: fourteen hundred and ninety acres of land, surveyed in the name of Nicholas Taliaferro, on part of a military warrant, No. 854, on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, in Mayo Carrington's line, running with Lewis's line, N. 79° E. 106 poles, to three dogwoods and an elm; thence N. 31° W. 930 poles, to a beech in the line of William Dark's survey, No. 1,445; thence N. 72° W. 124 poles, to a hickory and two dogwoods; thence S. 52° W. 244 poles, crossing the north fork of Paint creek at 188 poles, to a maple and sugar tree on the west side of the north fork; thence S. 45° E. 46 poles, to two sugar trees; thence S. 40° W. 60 poles, to two sugar trees, two beeches, and two dogwoods; thence S. 6° E. 46 poles, to two sugar trees and two beeches on a level in the line of Francis Coleman's survey, No. 562; thence with said line and the line of Mayo Carrington's survey, S. 50° E. 905 poles, crossing the north fork at 593 poles, to the beginning, containing fourteen hundred and ninety acres of land, more or less, with the appurtenances; to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended; by virtue of which said demise the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes afterwards, to wit, on the first day of August, in the year aforesaid, at the county aforesaid, and within the jurisdiction aforesaid,

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with force and arms entered into the premises aforesaid, with the appurtenances, which the said Wesley Shipley Porter, infant heir as aforesaid, by Sarah Porter, his mother and next friend as aforesaid, demised to the said John Stiles in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace, and to the damage of the said John Stiles of one thousand dollars; and therefore he brings suit, &c. And the said John Stiles avers that he and the said Wesley Shipley Porter, as also the said Sarah Porter, are citizens of and residents in the State of Maryland, and the said Thomas Nokes is a citizen of and resident in the State of Ohio; and that they, the said plaintiff and defendant are citizens of and residents in different States, and not in the same State.

CREIGHTON & BOND,
Attorneys for plaintiff.

Pledges, etc. { JOHN DOE, and
RICHARD ROE.

SIR: I am informed that you are in possession of or claim title to the premises in the within declaration of ejectment named, or to some part thereof, and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you that you appear in the United States' circuit court for the seventh circuit, within and for the district of Ohio, on the first day in the next term, by some attorney of that court, and that then and there by a rule to be made of the same court, you cause yourself to be made defendant in my stead, otherwise I will suffer judgment to be entered against me by default, and you will be turned out of possession.

Your loving friend,

THOMAS NOKES.

To Gen. DUNCAN MCARTHUR. *20th December*, 1821.

State of Ohio, Ross county, sct.—Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Peter Porter, who, being of lawful age, and by me duly sworn, deposeth and saith, that, on Saturday the 22d day of December, 1821, he called at the dwelling-house of Duncan McArthur, in Ross county aforesaid, tenant named in the annexed notice, for the purpose of serving the subjoined declaration and notice in ejectment on him; and, upon being informed that said Duncan was from home, this affiant then served a true copy of the said declaration and notice on the wife of the said Duncan, and informed her of the nature and character of the same. This affiant further swears, that upon the same day he went upon the land in the said declaration described, and then and there, the said Duncan McArthur not being found, this affiant made service of the said declaration and notice, by reading the said notice on land, and then affixing a true copy of said declaration and notice upon a tree growing upon the said land, the said notice being addressed to the said Duncan McArthur. And further saith not.

PETER PORTER.

Subscribed and sworn to this 28th day of December, 1821, before me.
LEVIN BELT, *J. P.* [SEAL.]

And at the same term, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-two, came the plaintiff afore-

said, by his attorneys, and filed a certain other declaration in an action of ejectment, which is in the words and figures following, to wit: United States' circuit court for the seventh circuit within and for the district of Ohio, of the term of January, in the year of our Lord one thousand eight hundred and twenty-two, Ohio district, set. John Stiles, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, complains of Thomas Nokes, a citizen of and resident in the State of Ohio, in custody, &c. of a plea of trespass, with force and arms, &c. for that whereas Wesley Shipley Porter, an infant, sole heir of George Porter, deceased, by Sarah Porter, his mother and next friend, said Wesley and Sarah being citizens of and residents in the said State of Maryland, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-one, at the county of Ross, in the said district, and within the jurisdiction of this court, had demised, granted, and to farm let, to the said John Stiles, all that tract or parcel of land, situate, lying, and being in the said county of Ross, and within the district and jurisdiction aforesaid, and described as follows, to wit: fourteen hundred and ninety acres of land, surveyed in the name of Nicholas Taliaferro, on part of a military warrant No. 854, on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, Mayo Carrington's line, running with Lewis's line, N. 79° E. 106 poles, to three dogwoods and elm; thence N. 31° W. 93 poles, to a beech in the line of William Dark's survey, No. 1445; thence N. 72° W. 124 poles, to a hickory and two dogwoods; thence S. 52° W. 244 poles, crossing the north fork of Paint creek at 188 poles, to a maple and sugar tree on the west side of the north fork; thence S. 45° E. 46 poles, to two sugar trees; thence S. 40° W. 60 poles, to two sugar trees, two beeches, and two dogwoods; thence S. 6° E 46 poles, to two sugar trees and two beeches on a level in the line of Francis Coleman's survey, No. 562; thence with the said line, and in the line of Mayo Carrington's survey, S. 50° E. 905 poles, crossing the north fork at 593 poles, to the beginning, containing fourteen hundred and ninety acres of land, more or less, with the appurtenances; to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended; by virtue of which said demise, the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes afterwards, to wit. on the first day of August, in the year aforesaid, at the county aforesaid, with force and arms entered into the premises aforesaid, with the appurtenances, which the said Wesley Shipley Porter, infant heir as aforesaid, by Sarah Porter, his mother and next friend as aforesaid, had demised to the said John Stiles in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace, and to the damage of the said John Stiles of one thousand dollars; and therefore he brings suit, &c. And the said John Stiles avers that he the said Wesley Shipley Porter, as also the said Sarah Porter, are citizens of and residents in the State of Maryland, and the said Thomas Nokes is a citizen of and resident in the State of Ohio; and that they, the said plaintiff and defendant, are citizens of and residents in different States, and not in the same State.

CREIGHTON & BOND,
Attorneys for plaintiff.

Pledges, etc. { JOHN DOE, and
RICHARD ROE.

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SIR: I am informed that you are in possession of or claim title to the premises in the within declaration of ejectment named, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you that you appear in the United States' circuit court for the seventh circuit within and for the district of Ohio, on the first day in the next term, by some attorney of that court; and that then and there, by a rule to be made of the same court, you cause yourself to be made defendant in my stead, otherwise I will suffer judgment to be entered against me by default, and you will be turned out of possession.

Your loving friend,

THOMAS NOKES.

20th December, 1821.

To Mr. LEVIN REDMAN.

State of Ohio, Ross county, sct.—Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Peter Porter, who, being of lawful age, and by me duly cautioned and sworn to speak the truth, deposeth and saith, that, on Saturday, the 22d December, 1821, he called at the dwelling-house of Levin Redman, in the county aforesaid, for the purpose of serving the annexed declaration and notice in ejectment; and, being informed that said Redman was from home, this affiant then served a true copy of the said declaration and notice on the wife of said Redman, and also informed her of the nature of the same. And further saith not.

PETER PORTER.

Subscribed and sworn to this 28th December, 1821, before me.

LEVIN BELT, *J. P.* [SEAL.]

And at the same term, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-two, came the plaintiffs aforesaid, by their attorneys, and filed a certain other declaration in an action of ejectment, which is in the words and figures following, to wit: United States' circuit court for the seventh circuit within and for the district of Ohio, of the term of January, in the year of our Lord one thousand eight hundred and twenty-two, Ohio district, sct.—John Stiles, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, complains of Thomas Nokes, a citizen of and resident in the State of Ohio, in custody, &c. of a plea of trespass, with force and arms, &c. for that whereas Wesley Shipley Porter, an infant, and sole heir of George Porter, deceased, by Sarah Porter, his mother and next friend, said Wesley and Sarah being citizens of and residents in the said State of Maryland, on the first day of June, in the year of our Lord one thousand eight hundred and twenty, at the county of Ross, in the said district, and within the jurisdiction of this court, had demised, granted, and to farm let, to the said John Stiles, all that part or parcel of land, situate, lying, and being in the said county of Ross, and within the district and jurisdiction aforesaid, and described as follows, as to wit: fourteen hundred and ninety acres of land, surveyed in the name of Nicholas Taliaferro, on part military warrant No. 854, on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, in Mayo Carrington's line, running with Lewis's line, N. 79° E. 106 poles, to three dogwoods and an elm; thence N. 31° W 930 poles to a beech

in the line of William Dark's survey, No. 1,445; thence N. 72° W. 124 poles to a hickory and two dogwoods; thence S. 52° W. 244 poles, crossing the north fork of Paint creek at 188 poles, to a maple and sugar tree on the west side of the north fork; thence S. 45° E. 46 poles to two sugar trees; thence S. 40° W. 60 poles to two sugar trees, two beeches, and two dog woods; thence S 6° E. 46 poles to two sugar trees and two beeches, on a level in the line of Francis Coleman's survey, No. 562; thence with said line, and the line of Mayo Carrington's survey, S. 50° E. 905 poles, crossing the north fork at 593 poles, to the beginning, containing 1,490 acres of land, more or less, with the appurtenances: to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended. By virtue of which said demise, the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes, afterwards, to wit, on the first day of August, in the year aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms, entered into the premises aforesaid, with the appurtenances, which the said Wesley Shipley Porter, infant heir as aforesaid, by Sarah Porter, his mother and next friend as aforesaid, had demised to the said John Stiles in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace, and to the damage of the said John Stiles of one thousand dollars; and therefore he brings suit, &c. And the said John Stiles avers that he, the said Wesley Shipley Porter, as also the said Sarah Porter, are citizens of and residents in the State of Maryland, and the said Thomas Nokes is a citizen of and resident in the State of Ohio; and that they, the said plaintiff and defendant, are citizens of and residents in different States, and not in the same State.

CREIGHTON & BOND,
Attorneys for Plaintiff.

Pledges, etc. { JOHN DOE, and
RICHARD ROE.

SIR: I am informed that you are in possession of, or claim title to, the premises in the within declaration of ejectment named, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you that you appear in the United States' circuit court for the seventh circuit within and for the district of Ohio, on the first day in the next term, by some attorney of that court; and that then and there, by a rule to be made of the same court, you cause yourself to be made defendant in my stead, otherwise I will suffer judgment to be entered against me by default, and you will be turned out of possession.

Your loving friend,
THOMAS NOKES.

To Mr. HENRY WOLFE. *20th December*, 1821.

State of Ohio, Ross County, sct.—Personally appears before me, the subscriber, a justice of the peace in and for the county aforesaid, Peter Porter, who, being of lawful age, and by me duly sworn, deposeth and saith, that he served a true copy of the annexed declaration and notice in eject-

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ment on Henry Wolfe, the tenant in the said notice named, on the 22d inst. and then and there informed him of the nature and character of the same.

PETER PORTER.

Sworn to and subscribed this 28th day of December, 1821, before me.

LEVIN BELT, *J. P.* [L. S.]

And at the same term, to wit, at the January term of said court, in the year of our Lord one thousand eight hundred and twenty-two, comes the plaintiff aforesaid, by his attorneys, and filed a certain other declaration in an action of ejectment, which is in the words and figures following, to wit:

United States' Circuit Court for the seventh circuit within and for the district of Ohio, of the term of January, in the year of our Lord one thousand eight hundred and twenty-two, Ohio district, sct.

John Stiles, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, complains of Thomas Nokes, a citizen of and resident in the State of Ohio, in custody, &c. of a plea of trespass, with force and arms, &c. for that whereas Wesley Shipley Porter, an infant, and sole heir of George Porter, deceased, by Sarah Porter, his mother and next friend, said Wesley and Sarah being citizens of and residents in the State of Maryland, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-one, at the county of Ross, in the said district, and within the jurisdiction of this court, had demised, granted, and to farm let, to the said John Stiles, all that tract or parcel of land, situate, lying, and being in the said county of Ross, and within the jurisdiction aforesaid, and described as follows, to wit: fourteen hundred and ninety acres of land, surveyed in the name of Nicholas Taliaferro, on part of a military warrant No. 854, on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, in Mayo Carrington's line, running with Lewis's line N. 79° E. 106 poles to three dogwoods and an elm; thence N. 21° W. 930 poles to a beech in the line of William Dark's survey, No. 1,445; thence N. 72° W. 124 poles to a hickory and two dogwoods; thence S. 52° W. 244 poles, crossing the north fork of Paint creek at 188 poles, to a maple and sugar tree on the west side of the north fork; thence S. 45° E. 46 poles to two sugar trees; thence S. 40° W. 60 poles to two sugar trees and two dogwoods; thence S. 6° E. 46 poles to two sugar trees and two beeches, on a level in the line of Francis Coleman's survey, No. 562; thence with said line, and with the line of Mayo Carrington's survey, S. 50° E. 905 poles, crossing the north fork at 593 poles, to the beginning, containing fourteen hundred and ninety acres of land, more or less, with the appurtenances: to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended. By virtue of which said demise, the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes, afterwards, to wit, on the first day of June, in the year aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms, entered into the premises aforesaid, with the appurtenances, which the said Wesley Shipley Porter, infant heir as aforesaid, by Sarah Porter, his mother and next friend as aforesaid, had demised to the said John Stiles in manner aforesaid, for the term aforesaid,

which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace, and to the damage of the said John Stiles of one thousand dollars; and therefore he brings suit, &c. And the said John Stiles avers that he and the said Wesley Shipley Porter, as also the said Sarah Porter, are citizens of and residents in the State of Maryland, and the said Thomas Nokes is a citizen of and resident in the State of Ohio; and that they, the said plaintiff and defendant, are citizens of and residents in different States, and not in the same State.

CREIGHTON & BOND,
Attorneys for Plaintiff.

Pledges, etc. { JOHN DOE and
RICHARD ROE.

SIR: I am informed that you are in possession of, or claim title to, the premises in the within declaration of ejectment named, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you that you appear in the United States' circuit court for the seventh circuit within and for the district of Ohio, on the first day in the next term, by some attorney of that court; and that then and there, by a rule to be made of the same court, you cause yourself to be made defendant in my stead, otherwise I will suffer judgment to be entered against me by default, and you will be turned out of possession.

Your loving friend,

THOMAS NOKES.

Mr. THOMAS NOBLE. *20th December*, 1821.

State of Ohio, Ross county, sct.—Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Peter Porter, who, being of lawful age, and by me duly sworn, deposeth and saith, that, on Saturday, the 22d instant, he called at the house of Thomas Noble, for the purpose of serving the annexed declaration and notice in ejectment on the said Thomas Noble, the tenant in said notice named; and being informed that the said Thomas Noble was from home; this affiant then served a true copy of said declaration and notice on the wife of the said Thomas Noble, and informed her of the nature of the same.

PETER PORTER.

Subscribed and sworn to this 28th day of December, in the year 1821, before me.

LEVIN BELT, *J. P.* [L. S.]

And at the same term, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-two, came the plaintiff aforesaid, by his attorney aforesaid, and filed a certain other declaration of ejectment in the words and figures following, to wit:

United States' Circuit Court for the seventh circuit within and for the district of Ohio, of the term of January, in the year of our Lord one thousand eight hundred and twenty-two, Ohio district, sct.

John Stiles, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, complains of Thomas Nokes, a citizen of and

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resident in the State of Ohio, in custody, &c., of a plea of trespass, with force and arms, &c., for that whereas Wesley Shipley Porter, an infant, and sole heir of George Porter, deceased, by Sarah Porter, his mother and next friend, (said Wesley and Sarah being citizens of and residents in the said State of Maryland,) on the first day of June, in the year of our Lord one thousand eight hundred and twenty, at the county of Ross, in said district, and within the jurisdiction of this conrt, had demised, granted, and to farm let, to the said John Stiles, all that tract or parcel of land, situate, lying, and being in the said county of Ross, and within the district and jurisdiction aforesaid, and described as follows, to wit: fourteen hundred and ninety acres of land, surveyed in the name of Nicholas Taliaferro, on a part of a military warrant No. 854, on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, on Mayo Carrington's line, running with Lewis's line, N. 79° E. 106 poles to three dogwoods and an elm; thence N. 31° W. 930 poles to a beech in the line of William Dark's survey, No. 1,445; thence N. 72° W. 124 poles to a hickory and two dogwoods; thence S. 52° W. 244 poles, crossing the north fork of Paint creek at 188 poles, to a maple and sugar tree on the west side of the north fork; thence S. 45° E. 46 poles, to two sugar trees; thence 40° W. 60 poles to two sugar trees and two dogwoods; thence S. 60° E. 46 poles to two sugar trees and two beeches, on a level in the line of Francis Coleman's survey, No. 562; thence with the said line, and with the line of Mayo Carrington's survey, S. 50° E. 905 poles, crossing the north fork at 598 poles, to the beginning, containing fourteen hundred and ninety acres of land, more or less, with the appurtenances: to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended. By virtue of which demise, the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes, afterwards, to wit, on the first day of August, in the year aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms, entered into the premises aforesaid, with the appurtenances, which the said Wesley Porter, infant heir as aforesaid, by Sarah Porter, his mother and next friend as aforesaid, had demised to the said John Stiles in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace, and to the damage of the said John Stiles of one thousand dollars, and therefore he brings suit, &c. And the said John Stiles avers that he the said Wesley Shipley Porter, as also the said Sarah Porter, are citizens of and residents in the State of Maryland, and the said Thomas Nokes is a citizen of and resident in the State of Ohio; and that they, the said plaintiff and defendant, are citizens of and residents in different States, and not in the same State.

CREIGHTON & BOND,
Attorneys for Plaintiff.

Pledges, etc. { JOHN DOE, and
RICHARD ROE.

SIR: I am informed that you are in possession of, or claim title to, the premises in the within declaration of ejectment named, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you that you appear in the United

States' circuit court for the seventh circuit within and for the district of Ohio, on the first day in the next term, by some attorney of that court, and that then and there, by a rule to be made of the same court, you cause yourself to be made defendant in my stead, otherwise I will suffer judgment to be entered against me by default, and you will be turned out of possession.

Your loving friend,

THOMAS NOKES.

To Mr. SAMUEL ROBERTS. 20*th December*, 1821.

State of Ohio, Ross county, sct.—Personally appears before me, the subscriber, a justice of the peace in and for the county aforesaid, Peter Porter, who, being of lawful age, and by me duly sworn, deposeth and saith, that, on Saturday, the 22d instant, he served a true copy of the annexed declaration and notice in ejectment on Samuel Roberts, the tenant in said notice named, and informed him of the nature and character of the same.

PETER PORTER.

Subscribed and sworn to this 28th day of December, 1821, before me.

LEVIN BELT, *J. P.* [L. S.]

And at the same term, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-two, come the plaintiff aforesaid, by his attorney, and filed a certain other declaration in an action of ejectment, which is in the words and figures following, to wit:

United States circuit court for the seventh circuit within and for the district of Ohio, of the term of January, in the year of our Lord one thousand eight hundred and twenty-two, Ohio district, sct.

John Stiles, a citizen of and resident in the State of Maryland, by Creighton and Bond, his attorneys, complains of Thomas Nokes, a citizen of and resident in the State of Ohio, in custody, &c. of a plea of trespass, with force and arms, &c., for that whereas Wesley Shipley Porter, an infant and sole heir of George Porter, deceased, by Sarah Porter, his mother and next friend, (said Wesley and Sarah being citizens of and residents in the State of Maryland,) on the first day of June, in the year of our Lord one thousand eight hundred and twenty-one, at the county of Ross, in the said district, and within the jurisdiction of this court, had demised, granted, and to farm let to the said John Stiles, all that tract or parcel of land, situate, lying, and being in the said county of Ross, and within the district and jurisdiction aforesaid, and described as follows, to wit: fourteen hundred and ninety acres of land, surveyed in the name of Nicholas Taliaferro, on part of a military warrant No. 854, on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, in Mayo Carrington's line, running with Lewis's line N. 79° E. 106 poles to three dogwoods and an elm; thence N. 31° W. 930 poles to a beech in the line of William Dark's survey, No. 1,445; thence N. 72° W. 124 poles to a hickory and two dogwoods; thence S. 52° W. 244 poles, crossing the north fork of Paint creek at 188 poles, to a maple and sugar tree on the west side of the north fork; thence S. 45° E. 46 poles to two sugar trees; thence S. 40° W. 60 poles to two sugar trees, two beeches, and two dogwoods; thence S. 6° E. 46 poles to two sugar trees and two beeches, on a level in the line of Francis Coleman's survey, No. 562; thence with the said line, and with the line of

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Mayo Carrington's survey, S. 50° E. 905 poles, crossing the north fork at 593 poles, to the beginning, containing fourteen hundred and ninety acres of land, more or less, with the appurtenances: to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles, and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended. By virtue of which said demise, the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes afterwards, to wit, on the first day of August, in the year aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms, entered into the premises aforesaid, with the appurtenances, which the said Wesley Shipley Porter, infant heir as aforesaid, by Sarah Porter, his mother and next friend as aforesaid, had demised to the said John Stiles in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace, and to the damage of the said John Stiles of one thousand dollars; and therefore he brings suit, &c. And the said John Stiles avers that he and the said Wesley Shipley Porter, as also the said Sarah Porter, are citizens of and residents in the State of Ohio, and that they the said plaintiff and defendant are citizens of and residents in different States, and not in the same State.

CREIGHTON & BOND,
Attorneys for Plaintiff.

Pledges, etc. { JOHN DOE, and
RICHARD ROE.

MADAM: I am informed that you are in possession of, or claim title to, the premises in the within declaration of ejectment named, or to some part thereof; and I being sued in this action as casual ejector, and having no claim or title to the same, do advise you that you appear in the United States' circuit court for the seventh circuit within and for the district of Ohio, on the first day in the next term, by some attorney of that court, and that then and there, by a rule to be made of the same court, you cause yourself to be made defendant in my stead, otherwise I will suffer judgment to be entered against me by default, and you will be turned out of possession.

Your loving friend,

THOMAS NOKES.

Mrs. MARY DOLLAY. *20th December*, 1821.

State of Ohio, Ross county, sct.—Personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, Peter Porter, who, being of lawful age, and by me duly sworn, deposeth and saith, that, on Saturday, the 22d day of December, 1821, he served a copy of the annexed declaration in ejectment and notice on Mary Dalley, the tenant in said notice named, and then and there, by reading the same to her, advised her of the nature and contents thereof.

PETER PORTER.

Subscribed and sworn to this 28th day of December, 1821, before me.
LEVIN BELT, *J. P.* [L. S.]

And afterwards, to wit, at the term aforesaid, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-two,

came the parties aforesaid, by their attorneys; and, by consent, the foregoing causes are consolidated, and Duncan McArthur, one of the tenants in possession, is made defendant in the room of the now defendant, Thomas Nokes, the casual ejector; and the said Duncan McArthur confesses the lease, entry, and ouster, in the plaintiff's declaration supposed, and agrees to insist upon the title only at the trial, and for plea saith he is not guilty of the trespass and ejectment in the declaration mentioned, in manner and form as the plaintiff therein against him complains; and of this he puts himself upon the country for trial, and the plaintiff doth the like, &c. Therefore let a jury come, &c. And afterwards, to wit, at the September term of said court, in the year last aforesaid, the defendant, by his attorney, filed exceptions to the survey returned and filed in this court, and asked leave to amend the same; and, for reasons appearing to the court, it is ordered that the same be granted; and thereupon, on motion of Thomas Scott, Esq., of counsel for the defendant, and on the filing of his written statement, it is ordered that the cause be continued until the next term, at the defendant's costs. And afterwards, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-three, this cause was continued. And afterwards, to wit, at the September term of our said court, in the year of our Lord last aforesaid, came the parties aforesaid, by their attorneys, and thereupon came a jury, to wit: Arora Buttles, John Wolcot, Abiather V. Taylor, Philo H. Olmsted, William Long, John Matthews, William T. Martin, Samuel Turner, Elisha Kelly, Thomas Sinnard, Joseph McCutchen, and William Steele, who, being elected, tried, and sworn well and truly to try the issue joined, and the argument of counsel not being fully heard, were adjourned until to-morrow morning, nine o'clock.

Wednesday, September 3d, 1823. The jury empannelled and sworn in this cause, on yesterday, this day returned into court, and, after hearing the arguments of counsel, retired to consult of their verdict.

Thursday, September 4th, 1823. The jury empannelled and sworn in this cause, and who retired to consult of their verdict, this day returned into court with their verdict, as follows, viz: We, the jury, find the defendant guilty of the trespass and ejectment in the declaration mentioned, and assess the plaintiff's damages to six cents, which verdict is thus rendered subject to the opinion of the court on the question reserved by consent of parties, as to so much of the land in controversy as is contained in the deed of the sheriff of Ross county to said defendant, bearing date on the day of 1802, and upon part of the land included in said deed; if the opinion of the court upon the question so reserved by consent shall be with the plaintiff, that said deed is not valid to pass the land therein described, then we, the jury, find the defendant guilty of the trespass and ejectment in the plaintiff's declaration mentioned, accordingly, for that part also; and if the opinion of the court thereon shall be in favor of the said defendant, that said deed, with the other evidences exhibited as a part of said title, is valid to pass the fee to the said defendant, then the jury find the defendant not guilty of the trespass and ejectment, in said declaration mentioned, as to that part of the lands and premises in controversy. September 3d, 1823.

JOHN MATHEWS, *Foreman.*

Whereupon, Mr. Scott, of counsel for the defendant, gave notice that he would move the court for a new trial. And thereupon, a motion for a new

trial in this cause is continued until the next term. And afterwards, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-four, this cause was continued. And afterwards, to wit, at the July term of said court, in the year last aforesaid, motion for new trial continued under advisement. And afterwards, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-five, this cause was continued. And afterwards, to wit, at the June term of said court, in the year last aforesaid, motion for new trial continued under advisement. And afterwards, to wit, at the January term of said court, in the year of our Lord eighteen hundred and twenty-six, this cause was continued. And afterwards, to wit, at the July term of said court, in the year of our Lord eighteen hundred and twenty-six, came the parties, by their attorneys, and the motion for a new trial was fully argued, and, after consideration, the court do overrule the said motion; and thereupon, the plaintiff, by his attorney, moved the court to enter up a judgment herein on the special verdict found and returned by the jury in this cause, which motion, after argument of counsel, is granted. Therefore it is considered by the court that the plaintiff recover of the defendant his term yet to come and unexpired in the land and premises in the plaintiff's declaration mentioned, together with six cents, damages assessed by the jury, and his costs and charges by him about his suit in this behalf expended; and it is ordered that a writ of *habere facias possessionem* issue accordingly. The defendant, by his attorney, tendered his bill of exceptions to the opinion of the court in rendering judgment upon the special verdict aforesaid, which was accordingly allowed, signed and sealed, and ordered to be filed among the papers of this cause, and certified in the transcript or record of the same; the Honorable Robert Trimble not being present at the trial of this cause by the jury, did not sit upon the motion for a new trial first before mentioned; which said bill of exceptions is in the words and figures following, to wit:

Seventh Circuit Court United States, District of Ohio.

DUNCAN MCARTHUR
ads.
THE LESSEE OF WESLEY SHIPLEY PORTER. } *In ejectment.*

Be it remembered that the defendant's motion for a new trial having been argued at a previous term, on the grounds, 1st, that the verdict is contrary to evidence, and 2d, that upon the point reserved the law is with the defendant, said motion came on again to be argued, when the attorney for the defendant moved the court first to permit him to assign the following reasons, to wit: 3d, that new testimony has been discovered since the former trial, which fully supports the defendant's claim, which last motion was founded on an affidavit of the defendant, filed at the last January term of this court, and is in the words and figures following, to wit: Before me, Peter Patterson, a justice of the peace in and for Scioto township, Ross county, and State of Ohio, personally appeared Duncan McArthur, who being duly sworn, deposeth and saith, that he has recently been informed, and believes, that Israel Donaldson, who made the original survey No. 2,217, in the name of Nicholas Taliaferro, did, perhaps about the year 1819, at the instance of James Porter, run or trace with a compass the second line of said survey No. 2,217, N. 31° W. from the second corner thereof, in Jesse Spencer's orchard, to the place where Captain Isaac Davis states in his depo-

sition that he saw the mutilated beech corner, and that either in the suit brought by the widow Sarah Porter *vs.* said McArthur for the recovery of her dower, under the provisions of the act entitled "an act to enable the holders of land within this State to perpetuate testimony relative to their lands," the said Donaldson did depose and state, upon his oath, that, in making said original survey, No. 2,217, in the name of said Taliaferro he run the second line thereof, agreeably to the calls of the patent, from the three dogwoods and elm, which then did stand where Jesse Spencer's orchard now is, N. 31° W. or nearly over the same ground where he then run or traced it for Mr. James Porter, passing along by said Porter's and the McDill's improvements, and nearly by the house in which the widow of Rezin Porter now resides, which line is represented upon the within plat from the red line from A to B. The said deponent further saith, that, since hearing of the said deposition of the said Donaldson, he has examined the files and records in the clerk's office in the dower suit aforesaid, and also the records in the recorder's office of Ross county, but has not been able to find the said deposition. He further saith, that if a new trial should be granted in the suit of ejectment, Wesley Shipley Porter *vs.* said deponent, in the United States' circuit court for the seventh circuit and district of Ohio, he expects to be able by the next term of the said court (after that which is to commence on Monday next) to procure the attendance or take the deposition of the said Israel Donalson, and thereby be enabled to establish the true easterly boundary of said survey, No. 2,217, as first run from the three dogwoods and elm where Spencer's orchard now is, to the place where the beech corner stood, referred to in the deposition of Captain Isaac Davis, and which is represented by the red drawn line on the within plat, from A to B, as before stated.*

DUNCAN McARTHUR.

Sworn to and subscribed before me, this 31st day of December, 1825.
PETER PATTERSON, *J. Peace.* [SEAL.]

(At which term no business was done.) But the court being of the opinion that under the circumstances of the case the said affidavit of the discovery of new testimony could not be received as the ground of a motion for a new trial, refused to permit said reason to be assigned, or the said affidavit to be read in support thereof. To which opinion of the court the defendant, by his attorney, excepts, and prays the court to sign and seal his bill of exceptions, which is done accordingly.

[SEAL.]

The court having overruled the motion to permit the assignment of the third or last reason for a new trial, the attorney for the defendant was proceeding to argue the two first reasons for a new trial, when he was stopped by his honor the district judge, and directed only to argue the first reasons for a new trial—his honor the district judge being of opinion that the said second reason, to wit, the point reserved as referred to in the special verdict, and by consent made, was not properly assignable as a reason for a new trial; but the attorney for the defendant insisted, that, by the settled rules of practice of the court, and principles of law, and as said reasons had both been argued together at a former term, he had a right to proceed in the argument of both reasons together; but his honor the said district judge re-

* For plat, see original.

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fused to permit the attorney of the defendant so to proceed, and directed that the argument be confined to the first reason assigned for a new trial; to which direction and opinion of the court the defendant, by his attorney, excepts, and prays the court here to sign and seal this his bill of exceptions, which is done accordingly.

[SEAL.]

Whereupon said motion for a new trial, on the first ground for a new trial, to wit: "that the verdict is contrary to evidence," being argued and overruled by the court, the defendant's attorney was proceeding to argue the second reason assigned for a new trial, which is as follows: "that upon the point reserved the law is with the defendant," but the attorney for the plaintiff insisted that the motion for a new trial on this ground ought not to be argued, but that the proper motion would be to enter judgment on the verdict; of which opinion was the court. To which opinion of the court, the defendant, by his attorney, also excepts, and prays the court here to sign and seal this his bill of exceptions, which is done accordingly.

[SEAL.]

Whereupon, his honor Judge Trimble, president of the said circuit court, took his seat on the bench, and the defendant's motion for a new trial on the first reason assigned.

The undersigned, members of the bar of the court, do hereby certify that the foregoing was offered as a part of the bill of exceptions tendered by the defendant's attorney to the opinion of the court in the case of the lessee of Wesley Shipley Porter against the defendant Duncan McArthur, which was admitted by the attorney for the plaintiff to contain a true statement of the proceedings on a motion for a new trial at July term, 1826. But his honor the district Judge, before whom said proceedings were had, refused to sign said bills of exceptions. Whereupon the attorney called upon the following members of the bar, present, to sign and seal the same, which is done accordingly.

P. DODDRIDGE, [SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

July 25th, 1826.

As to so much of the lands in the plaintiff's declaration as is not included in the deed from the sheriff of Ross county to the defendants hereinafter mentioned, being overruled by the court, the plaintiff, by his attorney, here moved the court to enter judgment in his favor on the verdict for all the lands and premises in the plaintiff's declaration mentioned; which motion was opposed by the defendant's attorney, on the ground that upon the case reserved no judgment ought to be entered for the plaintiff for so much of the lands and premises in the declaration mentioned, as is included in the sheriff's deed to the defendant, hereinafter mentioned; because, by said deed, and the proceedings on which the same were based, all the right, title, interest and claim, which the lessor of the plaintiff before had in the said lands and premises mentioned therein, did pass thereby to, and become vested in, the said defendant; which said record, executions, endorsements, returns, proceedings, and conveyance, are the same referred to in and by the special verdict and case reserved, and are in the words and figures following, to wit:

sition that he saw the mutilated beech corner, and that either in the suit brought by the widow Sarah Porter *vs.* said McArthur for the recovery of her dower, under the provisions of the act entitled "an act to enable the holders of land within this State to perpetuate testimony relative to their lands," the said Donaldson did depose and state, upon his oath, that, in making said original survey, No. 2,217, in the name of said Taliaferro he run the second line thereof, agreeably to the calls of the patent, from the three dogwoods and elm, which then did stand where Jesse Spencer's orchard now is, N. 31° W. or nearly over the same ground where he then run or traced it for Mr. James Porter, passing along by said Porter's and the McDill's improvements, and nearly by the house in which the widow of Rezin Porter now resides, which line is represented upon the within plat from the red line from A to B. The said deponent further saith, that, since hearing of the said deposition of the said Donaldson, he has examined the files and records in the clerk's office in the dower suit aforesaid, and also the records in the recorder's office of Ross county, but has not been able to find the said deposition. He further saith, that if a new trial should be granted in the suit of ejectment, Wesley Shipley Porter *vs.* said deponent, in the United States' circuit court for the seventh circuit and district of Ohio, he expects to be able by the next term of the said court (after that which is to commence on Monday next) to procure the attendance or take the deposition of the said Israel Donalson, and thereby be enabled to establish the true easterly boundary of said survey, No. 2,217, as first run from the three dogwoods and elm where Spencer's orchard now is, to the place where the beech corner stood, referred to in the deposition of Captain Isaac Davis, and which is represented by the red drawn line on the within plat, from A to B, as before stated.*

DUNCAN McARTHUR.

Sworn to and subscribed before me, this 31st day of December, 1825.

PETER PATTERSON, *J. Peace.* [SEAL.]

(At which term no business was done.) But the court being of the opinion that under the circumstances of the case the said affidavit of the discovery of new testimony could not be received as the ground of a motion for a new trial, refused to permit said reason to be assigned, or the said affidavit to be read in support thereof. To which opinion of the court the defendant, by his attorney, excepts, and prays the court to sign and seal his bill of exceptions, which is done accordingly.

[SEAL.]

The court having overruled the motion to permit the assignment of the third or last reason for a new trial, the attorney for the defendant was proceeding to argue the two first reasons for a new trial, when he was stopped by his honor the district judge, and directed only to argue the first reasons for a new trial—his honor the district judge being of opinion that the said second reason, to wit, the point reserved as referred to in the special verdict, and by consent made, was not properly assignable as a reason for a new trial; but the attorney for the defendant insisted, that, by the settled rules of practice of the court, and principles of law, and as said reasons had both been argued together at a former term, he had a right to proceed in the argument of both reasons together; but his honor the said district judge re-

* For plat, see original.

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fused to permit the attorney of the defendant so to proceed, and directed that the argument be confined to the first reason assigned for a new trial; to which direction and opinion of the court the defendant, by his attorney, excepts, and prays the court here to sign and seal this his bill of exceptions, which is done accordingly.

[SEAL.]

Whereupon said motion for a new trial, on the first ground for a new trial, to wit: "that the verdict is contrary to evidence," being argued and overruled by the court, the defendant's attorney was proceeding to argue the second reason assigned for a new trial, which is as follows: "that upon the point reserved the law is with the defendant," but the attorney for the plaintiff insisted that the motion for a new trial on this ground ought not to be argued, but that the proper motion would be to enter judgment on the verdict, of which opinion was the court. To which opinion of the court, the defendant, by his attorney, also excepts, and prays the court here to sign and seal this his bill of exceptions, which is done accordingly.

[SEAL.]

Whereupon, his honor Judge Trimble, president of the said circuit court, took his seat on the bench, and the defendant's motion for a new trial on the first reason assigned.

The undersigned, members of the bar of the court, do hereby certify that the foregoing was offered as a part of the bill of exceptions tendered by the defendant's attorney to the opinion of the court in the case of the lessee of Wesley Shipley Porter against the defendant Duncan McArthur, which was admitted by the attorney for the plaintiff to contain a true statement of the proceedings on a motion for a new trial at July term, 1826. But his honor the district Judge, before whom said proceedings were had, refused to sign said bills of exceptions. Whereupon the attorney called upon the following members of the bar, present, to sign and seal the same, which is done accordingly.

P. DODDRIDGE, [SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

July 25th, 1826.

As to so much of the lands in the plaintiff's declaration as is not included in the deed from the sheriff of Ross county to the defendants hereinafter mentioned, being overruled by the court, the plaintiff, by his attorney, here moved the court to enter judgment in his favor on the verdict for all the lands and premises in the plaintiff's declaration mentioned; which motion was opposed by the defendant's attorney, on the ground that upon the case reserved no judgment ought to be entered for the plaintiff for so much of the lands and premises in the declaration mentioned, as is included in the sheriff's deed to the defendant, hereinafter mentioned; because, by said deed, and the proceedings on which the same were based, all the right, title, interest and claim, which the lessor of the plaintiff before had in the said lands and premises mentioned therein, did pass thereby to, and become vested in, the said defendant; which said record, executions, endorsements, returns, proceedings, and conveyance, are the same referred to in and by the special verdict and case reserved, and are in the words and figures following, to wit:

Pleas held at Marietta, in the territory of the United States northwest of the river Ohio, on the third Tuesday of October, in the year of our Lord one thousand eight hundred and two, before the honorable the Judges of the General Court for our said Territory.

NICHOLAS TALIAFERRO, *vs.* PETER PORTER, adm'r of Geo. Porter, dec'd. } *Debt.—In the General Court.*

DECLARATION.

Territory of the United States northwest of the river Ohio.—October term, 1802, of the General Court, held at Marietta.

TALIAFERRO, *vs.* PORTER, administrator. } *Debt.*

Nicholas Taliaferro complains of Peter Porter, in custody, &c., administrator of all the goods and chattels, rights and credits of George Porter, deceased, (formerly of Baltimore county, in the State of Maryland, but late of Ross county, in the territory aforesaid,) in a plea that he, the said Peter, administrator as aforesaid, rendered to him, the said Nicholas, five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six and two thirds cents, current money of the United States, which he, the said Peter, unjustly detains from him, the said Nicholas; for that whereas the said George Porter, in his lifetime, to wit, on the eighth day of May, in the year one thousand seven hundred and ninety-nine, by his certain writing obligatory, signed with his hand and seal (according to the custom and leave of the State, to wit, Kentucky, where the same was made,) and to the court now shown, the date of which is the same day and year aforesaid, acknowledged himself to be held and firmly bound unto the said Nicholas Taliaferro, his heirs, executors, and administrators, in the sum of five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, for which payment he bound himself, his heirs, executors, and administrators. Nevertheless, the said George Porter, in his lifetime, and the said Peter, after the death of the said George, the said five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six cents and two-thirds of a cent, although often required, to wit, on the twenty-fifth day of December, in the year eighteen hundred, and often since, have not, nor hath either of them, paid to the said Nicholas Taliaferro the said sum, or any part thereof, but have hitherto refused, and the said Peter, administrator as aforesaid, doth yet deny to pay him the same, and unjustly detains the same, to the damage of the said Nicholas four hundred dollars; and therefore he produces this suit,

JOHN S. WILLS, *for plaintiff.*

J. DOE, R. ROE, } *Pledges, &c., this suit.*

Nicholas Taliaferro puts in his place John S. Wills, to prosecute.

At which day the plaintiff came; and the defendant being solemnly called, came not: whereupon the said plaintiff prays judgment. Therefore, it is considered by the court here that the said plaintiff do recover his debt

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aforesaid, to wit, dollars, by reason of the premises against the said Peter Porter, administrator of George Porter, deceased, as also dollars more in damages, as well for the detention of that debt as for his costs and charges by him expended in that behalf; and that the said plaintiff have execution therefor against the estate of the said George Porter, deceased.

I do hereby certify the aforesaid to be a true copy, taken from the records of this office. In testimony whereof, I place my signature, and annex the seal of office, the 20th day of August, in the year of our Lord one thousand eight hundred and three.

[SEAL.] WM. McFARLAND, *Clerk S. C. P. T.*

TERRITORY OF THE UNITED STATES NORTHWEST OF THE RIVER OHIO, *sct.*

The United States to the Sheriff of Ross county, greeting:

We command you, that of the goods and chattels of Peter Porter, administrator of George Porter, deceased, in your bailiwick, which remains in his hands to be administered, you cause to be made nine hundred and thirty-three dollars and thirty-three cents, debt, which Nicholas Taliaferro, before us, in our general court, recovered against him as administrator, as also one hundred and twenty-one dollars eighty-three cents in damages, as well for the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said Peter is convict, as appears to us of record, if so much goods and chattels can be found; if not, then that you make the same of his lands and tenements in your bailiwick, of the said George Porter, deceased, as also fifty cents more for this writ of fi. fa. and leva. fa., and have that money ready before us, at Cincinnati, in our general court, on the third Tuesday of March next, to render to the said Nicholas Taliaferro his debt and damages aforesaid, and satisfy yourself your own fees; and have then there his writ.

Witness the honorable John Cleves Symmes, Esq., one of the Judges of the general court, at Marietta, in our term of October, 1802.

WILLIAM McFARLAND, *Clerk G. C.*

(Endorsed) NICHOLAS TALIAFERRO, *vs.* PETER PORTER, admin'r of George Porter, deceased. } *Fi. fa. et Leva. fa.*

Debt,	$ 933	33
Interest,	102	66⅔
	$ 1,035	99⅔
Cost G. C.	18	16⅓
Interest from 19th October, 1802, to 19th March,	25	90
Sheriff's fees, and costs of jury,	41	77
Execution,		50

Returnable to March term, 1803.

On which the sheriff made the following return, to wit:

"Nulla bona. Levied upon 452 acres of land—condemned to be sold by a jury of twelve men, empannelled and sworn according to law. Not sold for want of time."

JER. McLENE, *Sheriff Ross County.*

The State of Ohio, Ross county, sct.—I, John McDougal, clerk of the supreme court for said county, do hereby certify that the foregoing is a correct copy of the execution and endorsement thereon, now filed in my office.

In witness whereof, I have hereunto set my hand, and have affixed my seal of office, at Chillicothe, this 31st December, 1808, and seventh year of this State.

[SEAL.] JOHN McDOUGAL, *Clerk S. C. R. C.*

State of Ohio to the Sheriff of the county of Ross.—You are hereby commanded that you expose to sale those lands and tenements of George Porter, deceased, which, according to our command, you have taken into your hands, and which remains unsold, as you have certified to the judges of the supreme court of the State of Ohio, to satisfy Nicholas Taliaferro nine hundred and thirty-three dollars and thirty three cents, debt, which, in our late general court, he recovered against Peter Porter, administrator of the said George Porter, deceased, as also one hundred and twenty-one dollars and eighty-three cents, and twenty-five cents, as well for the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said Nicholas recovered execution against the said Peter, as administrator as aforesaid, by virtue of a judgment in the said general court, and that you have the same before the judges of the supreme court next to be holden within and for the said county of Ross, on the first day of the term, then and there to render unto the said Nicholas of the debt, damages, and costs aforesaid.

Witness Return J. Meigs, jr., presiding judge of our said court, this 15th day of November, 1803.

WM. R. DICKINSON, *Clerk.*

On which writ is the following endorsement, to wit:

NICHOLAS TALIAFERRO, *vs.* GEORGE PORTER's administrator. } *Ven. exponas.*

Debt,	$ 933 33
Damages,	102 66⅔
Costs G. C.,	18 16⅔
Do. S. C.,	25
Interest from 19th October, 1802,	
Sheriff's fees, as endorsed on fi. fa.,	41 77½
	$ 1,177 52½

On which the sheriff made the following return, to wit:

"Sold 452 acres of land to D. McArthur, for $ 1,521, Dec'r 17, 1803."

JER. McLENE.

I have the money ready.

JER. McLENE.

The State of Ohio, Ross county, sct.—I, John McDougal, clerk of the supreme court for Ross county, do hereby certify that the foregoing is a true copy from the original execution, and the several endorsements thereon, filed in my office.

In testimony whereof, I have hereunto set my hand, and have affixed the seal of my office, this 3d January, 1809, and seventh year of this State.

[SEAL.] JOHN McDOUGALE, *Clerk S. C. R. C.*

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And thereupon the said Jeremiah McLene, sheriff of Ross county as aforesaid, executed and delivered to the defendant, the said Duncan McArthur, his deed, in the words and figures following, to wit:

This indenture, made this nineteenth day of December, in the year of our Lord one thousand eight hundred and three, between Jeremiah McLene, sheriff of Ross county, of the one part, and Duncan McArthur, of the county aforesaid, and State of Ohio, of the other part, witnesseth, That whereas Nicholas Taliaferro, lately, before the judges of the general court of the territory northwest of the Ohio, viz: at Cincinnati, at the term of October, in the year of our Lord one thousand eight hundred and two, did recover, by judgment of said court, against Peter Porter, administrator of all and singular the goods and chattels, rights and credits of George Porter, deceased, as well a certain debt of nine hundred and thirty-three dollars and thirty-three cents, as also one hundred two dollars sixty-six and two-thirds cents, for the detention of that debt, and other sums for his costs and charges by him about his suit in that behalf expended, whereof in the said court remaining more fully appears; and whereas the said Nicholas prosecuted on the judgment aforesaid, out of the court aforesaid, a certain writ of the territory, viz: a levari facias, to the sheriff of the said county of Ross directed, by which said writ it was commanded the said sheriff that of the goods and chattels, lands and tenements, which belonged to the said George Porter, deceased, at the time of his death, in the hands of the said Peter Porter, administrator as aforesaid, in his bailiwick, he should cause to be made the debt, damages, and costs aforesaid, if so much the said Peter had in his hands to be administered, and that he should have those moneys before the judges aforesaid at their next term, on a certain day now past, to render unto the said Nicholas for his debt, damages, and costs aforesaid, and also that writ; and whereas the said sheriff, by virtue of the said writ of levari facias to him directed, as aforesaid, did return that he had taken and secured a tract of land containing four hundred and fifty-two acres, situate on the north fork of Paint creek, there being no goods and chattels of the said George in his bailiwick, and in the hands of the said Peter Porter to be administered; which tract of land not being sufficient by the rents and profits in five years to satisfy debt, damages, and costs aforesaid, as has been certified by an inquest of twelve lawful men, summoned and sworn for that purpose; and whereas the said Nicholas afterwards prosecuted, on the judgment and return aforesaid, out of supreme court of the State of Ohio for the county of Ross aforesaid, a certain writ of the State, called a venditioni exponas, to the sheriff aforesaid directed; and whereas the said Jeremiah McLene, sheriff of Ross county aforesaid, in pursuance of the said writ of venditioni exponas, and according to the law in such cases made and provided, and the provisions and requisitions therein contained, having legally advertised and made known the same, did, on the seventeenth day of December, in the year one thousand eight hundred and three, in the town of Chillicothe, in the county aforesaid, expose to sale by public vendue or auction the aforesaid tract or parcel of land, with the appurtenances to the same belonging, and all the estate, right, title, property, claim and demand, whatsoever, of him, the said George Porter, at the time of his death, into and over the same; and wherefore the said Duncan McArthur did then and there bid for the same one thousand five hundred and twenty-one dollars, and no person bidding more, the said tract of land and premises, with the appurtenances, was, in due manner, openly struck off and sold to the said Duncan McAr-

thur, for the said sum of one thousand five hundred and twenty-one dollars. Therefore, to confirm the said purchase to the said Duncan McArthur, so as aforesaid made, this indenture witnesseth, that the said Jeremiah McLene, sheriff of Ross county aforesaid, for and in consideration of the sum of one thousand five hundred and twenty-one dollars, to him in hand paid by the said Duncan McArthur, the receipt whereof is hereby acknowledged, and by virtue of a law of the territory aforesaid, hath given, granted, bargained and sold, conveyed and confirmed, unto the said Duncan McArthur, his heirs and assigns for ever, all that said tract or parcel of land, containing four hundred and fifty-two acres, lying in the county of Ross, and on both sides of the north fork of Paint creek, being all that part of Nicholas Taliaferro's survey numbered two thousand two hundred and seventeen which said George Porter possessed at the time of his death, adjoining the southwesterly lines of Andrew Porter's one hundred and fifty acres, southwesterly and southeasterly lines of Joshua Porter's two hundred and forty acres, and the westerly lines of the survey on which said McArthur now lives, and the northeasterly, northwesterly, and southwesterly of James and Robert McDill's one hundred and forty acres, and from said McDill's southerly corner, southwestwardly with James Porter's line, to the southwesterly line of Taliaferro's said survey; thence with said line northwestwardly, and the other lines of the original survey, to the lower line of the survey on which William Rodgers now lives, and adjoining the same, containing as aforesaid four hundred and fifty-two acres, be the same more or less, with all the privileges and appurtenances to the same belonging, or in any wise appertaining, with all the estate, right, title, interest, property, claim and demand, of the said George Porter, at the time of his death, into and over the same and every part thereof: to have and to hold all and singular the above granted and bargained premises and appurtenances to the said Duncan McArthur, his heirs and assigns, to the only proper use, benefit, and behoof of him, the said Duncan McArthur, his heirs and assigns, for ever, in as full and ample a manner as I, the said Jeremiah McLene, sheriff aforesaid, by virtue of the authority aforesaid, might, could, or ought to convey the same.

In witness whereof, I, the said Jeremiah McLene, sheriff of Ross county, have hereunto set my hand and seal, at Chillicothe, the day and year first within written.

JER. McLENE, [SEAL.]
Sheriff Ross county

Signed, sealed, and delivered, in the presence of us,
MICHAEL THOMAS,
LEVI SIAIVELL.

State of Ohio, Ross county, ss.—Personally appeared before me, a justice of the peace in and for said county, the within named Jeremiah McLene, sheriff of said county, and acknowledged the above signing and sealing to be his act and deed, for the use and purposes therein mentioned.

Given under my hand and seal, this 10th day of February, 1804.

WILLIAM CREIGHTON, [SEAL.]

Columbus, 13th February, 1804.

The State of Ohio, Ross county, ss.—I, Samuel Tagart, recorder in and for the county aforesaid, do hereby certify that the aforegoing is a true copy

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of the deed from Jeremiah McLene, sheriff of said county, to Duncan McArthur, as it remains of record in book G, pages 107, 108, 109 and 110.

In testimony whereof, I have hereunto set my name and affixed the seal of my said office, at Chillicothe, this 27th day of October, 1827.

[SEAL.] SAM'L TAGART, *Recorder.*

And the said defendant, by his attorney, did insist that upon the verdict, and point so reserved therein, no judgment could be entered for the plaintiff; but the court being of opinion that the law is with the plaintiff, and that nothing passed by said deed to the defendant, entered judgment upon the said verdict; to which opinion of the court the defendant, by his attorney, excepts, and prays the court here to sign and seal this his bill of exceptions; which is done accordingly.

ROBERT TRIMBLE, [SEAL.]

July 24th, 1826. C. W. BYRD, [SEAL.]

Know all men by these presents, that we, Duncan McArthur and Francis Baldwin, of Ross county, Ohio, are held and firmly bound unto Wesley S. Porter, of the State of Maryland, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said Wesley S. Porter, his heirs or assigns; and for the payment thereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this 29th day of July, A. D. 1826. Whereas the above bound Duncan McArthur hath obtained a writ of error and citation to a judgment of the circuit court of the United States for the seventh circuit, and district of Ohio, obtained by John Stiles, ex demise Wesley S. Porter, in a certain action of ejectment lately determined in said court, wherein the said John Stiles, ex demise Wesley S. Porter, was plaintiff, and the said Duncan McArthur was defendant; now the condition of the above obligation is such, that, if the said writ shall be prosecuted to effect, and the said judgment of the circuit be reversed, then and in that case the said obligation shall be wholly void; otherwise it shall be and remain in full force and virtue in law.

DUNCAN McARTHUR, [SEAL.]
FRANCIS BALDWIN, [SEAL.]

Signed, sealed, and acknowledged, and delivered in presence of

WM. KEY BOND.

The United States of America, to the honorable the judges of the circuit court of the United States for the seventh circuit and district of Ohio, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action of ejectment, which was in the said court, between John Stiles, *ex dem.* Wesley S. Porter, plaintiff, and Duncan McArthur, defendant, manifest error hath intervened, as it is said, to the great damage of the said Duncan McArthur, as by his complaint we are informed, and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the supreme court of the United States, on the first day of the next term of said court, so that the judgment aforesaid

being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the Honorable John Marshall, Chief Justice of the United States of America, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and twenty-six, and in the fifty-first year of the American independence.

Attest, WM. KEY BOND, *Clerk.* [SEAL.]

Allowed by Robert Trimble, Associate Justice of the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, SUPREME COURT OF THE UNITED STATES.

To John Stiles, ex dem. Wesley S. Porter:

Whereas Duncan McArthur has obtained the allowance of our writ of error to the circuit court of the United States for the seventh circuit and district of Ohio directed, to remove into the said supreme court, to be holden at the city of Washington on the second Monday in the month of January next, the record of a certain plaint, process, proceedings, and judgment, in an action of ejectment, wherein you, the said John Stiles, ex dem. Wesley S. Porter, in that action lately recovered against the said Duncan McArthur judgment and costs, as by the said record, in the said circuit court and district aforesaid remaining, appears, in which said record and proceedings, and, also, in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Duncan McArthur we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be; you are, therefore, hereby commanded and cited to be and appear before the Judges of our supreme court, at the city of Washington, at the next term of said court, to be holden on the second Monday in the month of January next, to have the errors aforesaid corrected, and the judgment of our said supreme court thereupon.

Witness the Honorable John Marshall, Chief Justice of the United States of America, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and twenty-six, and in the fifty-first year of the American independence.

ROBERT TRIMBLE. [SEAL.]

Upon which the marshal made the following return, to wit:

JOHN STILES, ex demise of Wesley S. Porter,
vs.
DUNCAN MCARTHUR. } *In ejectment.*

As attorney for the plaintiff, I acknowledge service of the within citation.

WILLIAM CREIGHTON, Jr.

Served, by acknowledgment of plaintiff's attorney, the 21st Sept. 1826.

WILLIAM VANCE, *D. M.*

And afterwards, to wit, at a circuit court of the United States of America for the seventh circuit and district of Ohio, begun and held at Columbus on the second Monday of July, being the fourteenth day of the same month, in the year of our Lord one thousand eight hundred and twenty-eight, came Duncan McArthur, by his attorney, and filed a mandate from the Supreme

Court of the United States, which is in the words and figures following, to wit:

The United States of America, sct.—The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the district of Ohio, greeting:

Whereas, lately, in the circuit court of the United States for the district of Ohio, before you, or some of you, in a cause wherein the lessee of Wesley S. Porter was plaintiff, and Duncan McArthur was defendant, in ejectment, it was considered by the said circuit court "that the plaintiff recover of the defendant his term yet to come and unexpired in the land and premises in the plaintiff's declaration mentioned, together with six cents, the damages assessed by the jury, and his costs and charges by him about his suit in this behalf expended; and it is ordered that a writ of *habere facias possessionem* issue accordingly," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears; and whereas, in the present term of January, in the year of our Lord one thousand eight hundred and twenty-eight, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel, on consideration whereof, it is the opinion of this court, that the judgment of the said circuit court in this cause is erroneous, because their verdict is imperfect. It is, therefore, considered and adjudged by this court that the said judgment be, and the same is hereby, reversed and annulled; and it is further ordered, that this cause be remanded to the said circuit court, with directions to award a *venire facias de novo*. You, therefore, are hereby commanded that such proceedings be had in said cause, as, according to right and justice and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable John Marshall, Chief Justice of the said Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and twenty-eight.

[L. S.] WM. THOS. CARROLL, *Clerk of the Supreme Court of the United States.*

And thereupon, on motion of the said Duncan McArthur, by his attorney, it is ordered that the verdict heretofore rendered in this cause be set aside, and a new trial granted; and the court do further award, that a *venire facias de novo* issue in the premises, pursuant to the mandate aforesaid. And thereupon, this cause is further continued until the next December term of this court; at which said December term, which was begun and held on the fourth Monday, being the twenty-second day of the same month, in the year of our Lord one thousand eight hundred and twenty-eight, came again into court here the said parties, by their attorneys; and, thereupon, further proceedings in the premises aforesaid are continued until the thirteenth day of July next. And now, at this day, to wit, the thirteenth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, and being the day to which this cause was continued to, comes again into court here the said parties, by their attorneys; and, thereupon, came a jury, to wit: Wilmoth Jones, Hugh McFall, Ezekiel T. Cox, Samuel Fosdick, Jarvis Kibby, Sacket Reynolds, Edward Wadsworth, Thomas Henderson, Augus-

tine King, James McDowell, Cornelius Clark, and Robert Richmond, who were elected, tried, and sworn the truth to speak upon the issue joined, returned their verdict in the words following, to wit: "We, the jury, find the defendant guilty of the trespass and ejectment in the declaration mentioned, and do assess the plaintiff's damages at one cent." It is, therefore, considered by the court that the plaintiff recover of the defendant his term yet to come and unexpired in the premises aforesaid together with one cent, the damages by the jurors aforesaid, in their verdict assessed, and also his costs herein expended, taxed at dollars and cents. And it is ordered that a writ of *possessionem* issue accordingly, upon the application of the plaintiff. Upon the trial of this cause, and before the jury were empannelled and sworn, the defendant, by his counsel, tendered his bill of exceptions of the opinion of the court, upon the point in said bill of exceptions mentioned, and prayed that the same might be signed, sealed, and enrolled, and made a part of the record of this cause, which is accordingly done, which bill of exceptions is in the words and figures following, to wit:

LESSEE OF WESLEY S. PORTER,
vs.
DUNCAN MCARTHUR. } *In ejectment.*

Be it remembered, that, before the jury were empannelled in this cause, the defendant's counsel moved the court to permit him to withdraw the former entry, whereby he was made defendant in the room of the casual ejector for all the premises described in the plaintiff's declaration, and pleaded to issue, and now to enter himself defendant for the following parcel only, appearing on the report and diagram of A. C. Looker, surveyor of Ross county, made by order of this court, and filed in this cause, viz:

[*For plat, see original.*]

UNITED STATES' SEVENTH CIRCUIT COURT:

JOHN STILES, on the demise of Wesley Shipley Porter, plff.
against.
DUNCAN MCARTHUR, defendant. } *In ejectment.*

In pursuance of an order of the above court, which is herewith enclosed, and agreeably to previous notice given, a copy of which notice is also enclosed, I proceeded, on Monday, the 22d day of July, 1822, both parties being present, to survey and lay off the land in controversy in the above suit, beginning at the point A on the diagram annexed, where four sugar trees (called for as the beginning corner of Nicholas Taliaferro's survey, under which the plaintiff claims) formerly stood, pointed out to me by Michael Thomas, Francis Baldwin, and James Porter and John A. Fulton, whose depositions, marked No. 1 and 2, are herewith enclosed, at which point there is a sugar tree yet standing, marked as a corner, and, from examination, appears to have been marked twenty-seven years; from thence I run north 79° E. 110 poles, to a stone at B, now enclosed in Jesse Spencer's orchard, where three dogwoods and an elm formerly stood, showed to me by Michael Thomas, Francis Baldwin, and James Porter, whose depositions relative thereto are herewith enclosed, marked No. 3 and 4; from thence I run N. 17° 37' W. 771 poles, passing, at 160 poles, a hickory, marked as a line tree, four poles and two-tenths on my left, which hickory, with others I examined on the said line, (which is represented on the diagram by the

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right line K C,) appears to have been marked twenty-four years. I then continued to a beech at C in the line of William Dark's survey, No. 1445, which beech appears to have been marked for a corner to correspond with the lines running to and from it, with an addition of four marks on each side instead of three. At this place the deposition of Michael Thomas was taken, which is herewith enclosed, marked No. 5. While at the beech, I took the bearing of a beech marked as a line tree, and found it to be north 35 links, having the appearance of having been marked twenty-nine years; from thence I run with the line of Dark's survey aforesaid, connecting the course of N. 70° 37' W. 331 poles, to a hickory and two small dogwoods growing from one root, standing on the side of a hill at D, showed to me as a corner of Taliaferro's survey aforesaid by Michael Thomas, James Manary, and James Porter, whose depositions relative to said corner are herewith enclosed, marked No. 6. From thence I run the upper end line of Taliaferro's survey, connecting the course S. 52° 30' W. 314 poles, crossing the north fork of Paint creek at 256 poles, to a stone where a sugar tree and maple formerly stood, at E, showed me by James Porter, whose deposition relative thereto is herewith enclosed, marked No. 7; thence S. 45½ E. 46 poles, to two sugar trees, standing at F; thence S. 39½ W. 60 poles, to two sugar, two beeches and two dogwoods, at H, two dogwoods and one sugar, dead, but standing; thence S. 8° 16' E. 45 poles, to two sugar trees and two beeches, at I; thence S. 50° 50' E. 875 poles, crossing the north fork at 560 poles, to the beginning, containing by computation 2140 acres, in which last line I examined a lynn, and found it to have been marked twenty-five years. I then proceeded, at the request of the defendant, to the most westerly corner in Jesse Spencer's orchard, claimed by the defendant as the southeast corner of Taliaferro's survey, represented on the diagram by the letter K; from thence I run N. 35° W.; at about 80 poles touched an old line, and shortly passed to the right of it, and continued to diverge from it for some time. I then discovered a line on my right, from two to three poles distant, appearing to be marked very crooked. This line continued on my right until I arrived opposite to two hickories and an ironwood, at L on the diagram, which corner stands in the line of Peter Manifold's survey, No. 6188, and is the corner of said Manifold's survey, No. 6286, both of which tracts are claimed by the defendant. I then continued from said corner, running N. 34° 30 W., without discovering any old marks, 503 poles to a white oak, sugar tree, and elm stump, at M, northwest corner of said Manifold's survey, No. 6188. I then continued the same course 135 poles to the upper line of Taliaferro's survey, at N; at 92 poles stood a beech 4 poles on my right, variously marked with chops, &c., Indians, &c., which point is 35 poles S. 52° 30 W. 41.5 poles, to the point represented by the letter O, where the old lost line, referred to in the depositions of Michael Thomas, (marked No. 8,) crosses the upper line of Taliaferro's survey. I then run with said old line N. 36° 18' W. 80 poles, to a sugar tree on the bank of a small drain, at P, where the depositions of Michael Thomas and James Manary were taken relative to said old lost line, which are herewith enclosed, marked No. 8, as before stated. I then returned to white oak, sugar tree, and elm stump, at M, and run with the line of Manifold's survey, No. 6188, N. 52 E. 83 poles, to a small white oak and ash, where a small ash formerly stood, at R. I then retired to the point represented by the letter S, said to be in the line run from K. according to the patent course of Taliaferro's survey, and run N. 81° 30' W 102 poles, to a stake in Dark's

line, at T. I then returned 70 poles back on said line, and found the point, where a beech once stood, according to the testimony of Isaac Davis, marked, &c., to bear N. 58½ E. 52 poles, at which place (marked on the diagram by the letter V) the deposition of said Davis was taken, which is herewith enclosed, marked No. 9. I then returned to the beech at C, and run with Dark's line S. 70° 37' E. 168 poles, to a white oak, hickory, and elm, (the elm down,) at X, corner to William Dark's survey, No. 1445, of Connel's survey, No. 509; thence S. 74 W. 126 poles, to three hickories, (down and gone.) I then proceeded to ascertain the bearing of an old line, represented on the plat by the figures 3 and 4, and found it to bear N. 29° S W., passing within 8 links of the beech at C to a corner at 5, consisting of two hickories and a sugar tree, from which an old line runs N. 71 E., which lines and corner appears to have been marked 29 years, including the present. I then returned to the beech at C, and found, from an examination of Dark's line, that the beech above referred to stands eight links northerly of any other marked trees in Dark's line, and nineteen links from average marks of the old line 3 and 4, and 16 links northerly from the average marks on Dark's line. I then proceeded to examine the line running from the beech at C to Jesse Spencer's orchard, and found the same marked with a large axe, which marks appear to have been made 24 years, including the present year, which line intersects the line of Lewis' said survey, two poles west of the stone at K, and six poles west of the stone at B. In running from the beech at C to the hickory and two dogwoods, on the side of the hill at D, in Dark's line, I discovered two old and two new hacks on each side of many of the line trees, the old marks appeared to have been made 27 or 28 years, I am not certain which, and the new marks appear to have been made 24 years. We then proceeded to the beech at C, and took out the marks from the south side of said beech, and found the upper marks to have been made 24 years and the lower one 26 years; the other two marks were so much injured by worms and consequent decay, that it was impossible to determine the date with any degree of certainty. I then proceeded to the bank of Paint creek, represented by the figure 6, and run with the line of Mayo Carrington's survey, No. 529, N. 50 W. 28 poles, from which the stone at A bears N. 70 E. 43 links. I then went to where three redbuds formerly stood, at 7, corner of Francis Baldwin's tract of land, as laid out by George Porter, in his lifetime, from which place I run S. 31 E. 200 poles. At 149 poles, I had diverged from Baldwin's marked line 39 links, leaving it on my left; at 182 poles, passed ash, marked as a line, 16 links on my left; at the same distance, passed a walnut, marked as a line, two poles on my left, which last tree stands in Baldwin's line; at 183 poles, passed an elm, marked as a line tree, and also marked eP, standing 19 links on my left; continued to the corner in Spencer's orchard, fell 30 links to the east of the stone at L, and two poles west of the stone at B. The residue of the work that appears upon the diagram was protracted from a diagram furnished by the defendant, by the consent of the plaintiff, made by John Evans, former surveyor of Ross county.

Surveyed and protracted between the 22d day of July, 1822, and the 1st day of August, by

A. C. LOOKER, *Surveyor for Ross county.*

PHILO N. WHITE, } *C.C.*
PETER PORTER, }
JOHN CROMPTON, *Marker.*

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Deposition No. 1, *referred to in the aforegoing diagram, is in the words and figures following, viz:*

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff. *against.* DUNCAN MCARTHUR, defendant. } *In ejectment.*

The deposition of Michael Thomas, a witness for the plaintiff in the above case, taken on the premises in controversy, agreeably to previous notice given, a copy of which is herewith enclosed, and in pursuance of the provisions of the statute in such case made and provided, who being of lawful age, and duly sworn, deposeth and saith, that the three sugar trees upon the ground this day showed to A. C. Looker, surveyor of Ross county, was shown to him as the corner of Nicholas Taliaferro's survey, but bywhom he does not know.

Question by plaintiff. What time was it that the sugar trees were shown to you as the corner?

Answer. About 26 years since, and he thinks a little more.

Q. by county surveyor. Was the trees standing at the time they were shown to you as the corner?

A. They were.

Q. by plaintiff's attorney. Who do you think it was that informed you that the sugar trees were the corner of Taliaferro's survey?

A. Agreeably to my best impression, it was Nathaniel Massie, but cannot be certain as to that.

Q. by same. Did you ever know or hear of any other survey in the name of Taliaferro, in this part of the country?

A. No.

Q. by same. Was not this corner generally understood to be the beginning corner of Taliaferro's survey?

A. It was the general understanding in the neighborhood.

Q. by defendant. Will you state whether you refer to the year that the town of Chillicothe was laid out?

A. It was before Gen. Worthington came to the country, but what year he does not know.

Q. by same. Was you present at the making of Thomas Lewis's survey, No. 2216, or do you know any thing of its lines or courses?

A. I was not present at the making of the survey, but have been informed that a little buckeye near this is one of the corners, but does not know who gave the information.

Q. by same. Do you know any thing of Mayo Carrington's survey, No. 529?

A. No.

Q. by same. I think you state your information relative to the lines and corners of Taliaferro's survey was before Governor Thomas Worthington came first to this country?

A. I will not say as to this corner where we now are, but, as to the other corner, it was before said Worthington came to this country.

Q. by plaintiff's counsel. Do you know whether the defendant in this cause knew of the existence of the survey of Taliaferro at the time when Gov. Worthington came to the country?

A. I believe he did.

Q. by defendant. Why do you believe so? did you ever hear me say so?

A. I do not recollect that I ever did hear you say so; the reason why I believe you had a knowledge of Taliaferro's survey, is, that you was under the employ of Massie at that time.

Q. by same. When you say that this corner was generally known in the neighborhood, will you state who the neighbors were, or who composed the neighborhood?

A. When I said that it was generally known in the neighborhood that this was the corner, I meant to be understood that it was generally known to be the corner by those who came into the country at that time and since.

Q. by same. Who composed the neighborhood previous to the time when Gen. Worthington came to the country?

A. Gen. McArthur and myself lived in a bark camp at Chillicothe at that time and at the same time there were several men engaged in raising corn at the Station Prairie, about three miles in a southeasterly direction from Chillicothe.

Q. by same. Was there, at that time, any other persons living or staying within the present boundaries of the county of Ross?

A. There were two surveyors in the county previous to that time, and, as to any settlers, there were none at that time except Indians, to the best of my recollection, within said boundary; there were, at the same time, many persons passing and repassing through the country in search of lands.

Q. by same. Do you or do you not believe that the sugar tree now shown and pointed out, and referred to in the former part of your deposition, is one of the corner trees of Taliaferro's survey?

A. I do not believe that it is one of the corners of said survey.

Q. by plaintiff's attorney. Ever since this country has been settled, has it not been notorious to the inhabitants that the spot where the three sugar trees formerly stood, and which spot is now pointed out to the county surveyor, was the beginning corner of Taliaferro's survey, above referred to?

A. Yes.

Q. by defendant. Will you have the goodness to name some of the persons to whom this corner was notorious?

A. Francis Baldwin, Jeremiah McLene, James Porter.

And further this deponent saith not.

MICHAEL THOMAS.

Sworn to and subscribed before me.

ALISON C. LOOKER,
Surveyor for Ross county.

Feb. 22d, 1822.

Deposition No. 2, referred to in the aforegoing diagram of A. C. Looker, Surveyor of Ross county, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff.
vs.
DUNCAN MCARTHUR, defendant.
} *In ejectment.*

The deposition of James Porter, a witness for the plaintiff, who being of lawful age, and duly sworn, and cautioned the truth to speak, deposeth and saith: that, in 1798, either on the 27th or 28th day of April, George Porter took me to four sugar trees, standing on the ground now pointed out to the

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county surveyor, and informed me that they were the beginning corner of Taliaferro's survey. He then begun at the four sugar trees above mentioned, and run along the lines of said survey, in order to survey and lay off a tract of land purchased by myself of said George Porter, out of said Taliaferro's survey. Ever since that time, it has been known and received by the inhabitants in the vicinity as the established corner of Taliaferro's said survey; and that some time since this deponent purchased, as above stated, Jeremiah McLene was called upon the ground, and testified to the same corner, at the same place now shown. The reason of my remembering the corner so precisely, is, that the road leading to Chillicothe passed immediately through the corner trees until the trees were broken down and destroyed.

Question by defendant. Is or is not the sugar now standing one of the corner trees above referred to?

Answer. George Porter showed said tree to me as one of the corner trees, of whom I purchased the land on which I now reside.

And further the deponent saith not.

his
JAMES × PORTER.
mark.

Sworn and subscribed before me.

ALISON C. LOOKER,
Surveyor of Ross county.

22d July, 1822.

Also, at the same time and place, came Francis Baldwin, a witness for plaintiff, who being duly sworn, and cautioned the truth to speak, deposeth and saith: he bought off the east end of the survey of Nicholas Taliaferro one hundred and sixty seven acres, of George Porter, which survey begun at the place now shown to the surveyor for Ross county, where four sugar trees then stood, which trees are now gone; and, further, that the spot where those sugar trees formerly stood was then and ever since considered and received as the beginning corner of Taliaferro's survey by the generality of the people in the neighborhood.

Question by defendant. Who first informed you that the four sugar trees referred to were the beginning corner of Taliaferro's survey?

Answer. George Porter, of whom I purchased, which purchase was in the spring of the year 1798, and which land I now hold in possession, and have had the undisturbed possession of the same ever since.

Q. by plaintiff's attorney. What time did you first come to this country?

A. I came the first time late in the year of 1797, and made the above purchase in 1798; the first time I came I purchased lots in Chillicothe.

Q. by same. Was there not considerable settlements in the town of Chillicothe when you first arrived in this country?

A. There was a pretty smart settlement in Chillicothe.

And further saith not.

Sworn and subscribed before me.
22d July, 1822.

ALISON C. LOOKER,
Surveyor of Ross county.

The deponent further saith, that, for eight or ten years after, he made an improvement on the land above referred to; he was in the habit frequently of passing said sugar trees while they were yet standing; that they continued to stand during all that period.

FRANCIS BALDWIN.

Sworn and subscribed before me.
22d July, 1822.

ALISON C. LOOKER,
Surveyor of Ross county.

Also, at the same time and place, John A. Fulton, who being duly affirmed, as the law directs, deposeth and saith: that he came to this State in the year 1803, in the spring; that he came in 1806 or 7 with David Hays, who had a small connexion of the surveys with him; that Hays and himself came to the place some where near the place now shown to the surveyor; that some of the trees were then standing; that he, the deponent, has since taken the sugar now standing to be one of the trees he saw when he first saw the corner, but cannot be certain, but his impression is that it is one of said trees; that he never heard the defendant acknowledge the said sugar trees to be the corner of Taliaferro survey, but that other surveyors, together with himself, have frequently spoken of said sugar trees as the corner of said survey, and that he never heard any person dispute that the four sugar trees were the beginning corner of said survey, and that they stood at or near the spot now shown, that is to say, within two or three rods of said point.

JOHN A. FULTON.

Sworn and subscribed before me, Alison C. Looker, Surveyor of Ross county, this 22d day of July, 1822.

A. C. LOOKER, *S. R. C.*

Deposition No. 3, referred to in the aforegoing diagram, is in the words and figures following, to wit:

UNITED STATES' SEVENTH DISTRICT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff.
against
DUNCAN MCARTHUR, defendant. } *In ejectment.*

The deposition of Michael Thomas, a witness for the plaintiff, who being of lawful age, and duly sworn, deposeth and saith: that the stone this day shown to Alison C. Looker, surveyor for Ross county, stands upon the ground, to the best of his knowledge and belief, where one dogwood stood; the stone referred to is the easterly stone standing in Jesse Spencer's orchard; that the dogwood was pointed out to him, about 26 years since, by Nathaniel Massie; that, at that time, said Massie set his compass to run a line; that this deponent asked said Massie where he was going to run to; that Massie answered that he was going to run to that beech which he, the deponent, showed to him (Massie) some few days since; that deponent, after examining the compass, observed that that course would not strike said beech; that Massie asked this deponent whether he knew better than the compass; that this deponent answered that he did not, but that the course there pointed out would not strike the beech; that said Massie then proceeded to run the line, and continued the course until he had run out his distance, and discovered he had missed the beech corner above referred to; that this deponent then asked said Massie what they should do, whether they should go and run the line over again; that said Massie answered and said, No, we will run it over again at another time.

Question by plaintiff. Did not Massie inform you, at that time, that the dogwood above referred to was a corner of Taliaferro's survey?

Answer. He had informed me that the dogwood above referred to was a corner of Taliaferro's survey previous to the time above mentioned.

Q. by same. Was there any other dogwoods standing near the one above mentioned?

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A. There were, but I did not examine any of them, and cannot say that any of them were marked as corners.

Q. by plaintiff. Do you or do you not know that the dogwood above referred to has been generally taken and received in the neighborhood as one of the corners of said Taliaferro's survey, since the time when Massie and yourself were at the place, as mentioned above?

A. Yes, I believe it has by a good many, and I have never heard it disputed, except by Gen. McArthur, who disputed it some five years since.

Q. by defendant. Was not this ground covered with timber at the time you was here with Nathaniel Massie?

A. It was.

Q. by same. Is not the land now cleared around the place where the dogwood formerly stood on?

A. Yes.

Q. by same. Is there any thing in the formation of the ground around said corner by which you could be enabled to identify the precise spot where the dogwood formerly stood?

A. The ground is cleared; there is nothing but the surface of the ground by which I could point out the precise spot. I was directed to said corner by the course of the lines running to and from said spot.

Q by same. Are you accustomed to surveying, or did you run the line to and from said dogwood corner?

A. I am not, nor did I run the line or lines.

Q. by same. When Massie started to run the line from said dogwood towards the beech, did he inform you that he intended to run the line of Taliaferro's survey nearest to Chillicothe, or did he inform you that he intended to run to the beech in Dark's line?

A. He informed me that he intended to run to the beech in Dark's line which I had showed to him a few days previous.

Q. by same. Did Massie inform you that he intended said line as a line of Taliaferro's survey when he started from the dogwood?

A. He did not tell me so at that time, but I knew it before, for he had previously informed me what he was going to do, that is, to run a line of Taliaferro's survey.

Q. by same. Was you along with John Beasly when he made Taliaferro's survey?

A. No.

Q. by same. Do you know any thing about Beasly making said survey?

A. No.

Q. by same. Was you present at the making Lewis's survey, No. 2,216, or do you know any think about its courses or lines?

A. No.

Q. by same. Was you present at the making of Dark's survey, No. 1,445?

A. No.

Q. by same. Did you assist in running any other line of Taliaferro's survey, except the one above referred to?

A. No.

Q. by plaintiff's counsel. Have you lived in the neighborhood of said corner since you first settled in this country?

A. I have lived within a few miles ever since.

Q. by same. Have you not, in passing and repassing, ever since noticed the spot where said corner formerly stood?

Also, at the same time and place, John A. Fulton, who being duly affirmed, as the law directs, deposeth and saith: that he came to this State in the year 1803, in the spring; that he came in 1806 or 7 with David Hays, who had a small connexion of the surveys with him; that Hays and himself came to the place some where near the place now shown to the surveyor; that some of the trees were then standing; that he, the deponent, has since taken the sugar now standing to be one of the trees he saw when he first saw the corner, but cannot be certain, but his impression is that it is one of said trees; that he never heard the defendant acknowledge the said sugar trees to be the corner of Taliaferro survey, but that other surveyors, together with himself, have frequently spoken of said sugar trees as the corner of said survey, and that he never heard any person dispute that the four sugar trees were the beginning corner of said survey, and that they stood at or near the spot now shown, that is to say, within two or three rods of said point.

JOHN A. FULTON.

Sworn and subscribed before me, Alison C. Looker, Surveyor of Ross county, this 22d day of July, 1822.

A. C. LOOKER, *S. R. C.*

Deposition No. 3, referred to in the aforegoing diagram, is in the words and figures following, to wit:

UNITED STATES' SEVENTH DISTRICT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff. } *against* } *In ejectment.*
DUNCAN MCARTHUR, defendant.

The deposition of Michael Thomas, a witness for the plaintiff, who being of lawful age, and duly sworn, deposeth and saith: that the stone this day shown to Alison C. Looker, surveyor for Ross county, stands upon the ground, to the best of his knowledge and belief, where one dogwood stood; the stone referred to is the easterly stone standing in Jesse Spencer's orchard; that the dogwood was pointed out to him, about 26 years since, by Nathaniel Massie; that, at that time, said Massie set his compass to run a line; that this deponent asked said Massie where he was going to run to; that Massie answered that he was going to run to that beech which he, the deponent, showed to him (Massie) some few days since; that deponent, after examining the compass, observed that that course would not strike said beech; that Massie asked this deponent whether he knew better than the compass; that this deponent answered that he did not, but that the course there pointed out would not strike the beech; that said Massie then proceeded to run the line, and continued the course until he had run out his distance, and discovered he had missed the beech corner above referred to; that this deponent then asked said Massie what they should do, whether they should go and run the line over again; that said Massie answered and said, No, we will run it over again at another time.

Question by plaintiff. Did not Massie inform you, at that time, that the dogwood above referred to was a corner of Taliaferro's survey?

Answer. He had informed me that the dogwood above referred to was a corner of Taliaferro's survey previous to the time above mentioned.

Q. by same. Was there any other dogwoods standing near the one above mentioned?

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A. There were, but I did not examine any of them, and cannot say that any of them were marked as corners.

Q. by plaintiff. Do you or do you not know that the dogwood above referred to has been generally taken and received in the neighborhood as one of the corners of said Taliaferro's survey, since the time when Massie and yourself were at the place, as mentioned above?

A. Yes, I believe it has by a good many, and I have never heard it disputed, except by Gen. McArthur, who disputed it some five years since.

Q. by defendant. Was not this ground covered with timber at the time you was here with Nathaniel Massie?

A. It was.

Q. by same. Is not the land now cleared around the place where the dogwood formerly stood on?

A. Yes.

Q. by same. Is there any thing in the formation of the ground around said corner by which you could be enabled to identify the precise spot where the dogwood formerly stood?

A. The ground is cleared; there is nothing but the surface of the ground by which I could point out the precise spot. I was directed to said corner by the course of the lines running to and from said spot.

Q. by same. Are you accustomed to surveying, or did you run the line to and from said dogwood corner?

A. I am not, nor did I run the line or lines.

Q. by same. When Massie started to run the line from said dogwood towards the beech, did he inform you that he intended to run the line of Taliaferro's survey nearest to Chillicothe, or did he inform you that he intended to run to the beech in Dark's line?

A. He informed me that he intended to run to the beech in Dark's line which I had showed to him a few days previous.

Q. by same. Did Massie inform you that he intended said line as a line of Taliaferro's survey when he started from the dogwood?

A. He did not tell me so at that time, but I knew it before, for he had previously informed me what he was going to do, that is, to run a line of Taliaferro's survey.

Q. by same. Was you along with John Beasly when he made Taliaferro's survey?

A. No.

Q. by same. Do you know any thing about Beasly making said survey?

A. No.

Q. by same. Was you present at the making Lewis's survey, No. 2,216, or do you know any think about its courses or lines?

A. No.

Q. by same. Was you present at the making of Dark's survey, No. 1,445?

A. No.

Q. by same. Did you assist in running any other line of Taliaferro's survey, except the one above referred to?

A. No.

Q. by plaintiff's counsel. Have you lived in the neighborhood of said corner since you first settled in this country?

A. I have lived within a few miles ever since.

Q. by same. Have you not, in passing and repassing, ever since noticed the spot where said corner formerly stood?

A. I have noticed it so far that I could have pointed out pretty near the spot where it stood without the assistance of lines.

Q. by plaintiff. Was there not a road, for many years since, passing near the corner above mentioned?

A. There was a road passing near said corner, some years since I was first at it, which road I was frequently in the habit of travelling, and sometimes noticed said dogwood in passing.

Q. by same. Were you not in the habit of frequently accompanying surveyors, and traversing lines, and carrying chains, &c.?

A. Yes.

Q. by same. When in the habit of following lines, &c., were you enabled to find corners without the aid of the compass?

A. I was.

Q. by defendant. Has not the road to which you refer (as passing the dogwood) been changed for many years, and all traces or marks of it entirely obliterated?

A. Yes.

Q. by plaintiff. How far is the present limestone road from the place where the dogwood formerly stood?

A. I suppose ten or twelve poles.

Q. by defendant. Did Massie run the line from the dogwood towards Dark's line previous to said Worthington's first coming to this country?

A. He did.

Q. by plaintiff. Do you know the year or month when said Worthington first came to this country?

A. I do not, but it was after part of the town of Chillicothe was laid out into lots.

And further the deponent saith not. MICHAEL THOMAS.

Sworn and subscribed this 22d day of July, 1822, before me.

ALISON C. LOOKER,
Surveyor of Ross county.

Also, at the same time and place, came James Porter, a witness for plaintiff, who, being of lawful age, and duly sworn to speak the truth, deposeth and saith: that, in the year 1798, he came with George Conn to the place where a stone now stands, in Jesse Spencer's orchard, which was planted by Alison C. Looker, surveyor for Ross county, at which place there were then standing three dogwoods and elm, which trees were shown to me by said George Porter as the second corner of said Taliaferro's survey; that this deponent left the county for about three years, and afterwards returned to the county; that some time afterwards, as this deponent and said George Porter were riding together, said George asked this deponent if he could find that elm corner of Taliaferro's survey; that this deponent went immediately to said corner, and showed the same to said Porter, at which time the dogwoods aforesaid were standing; that said dogwoods and elm were standing for many years afterwards.

Question by defendant. Was not the spot where the stone above referred to is now standing covered with standing timber at the time you and George Porter were together at said corner?

Answer. Yes, it was.

Q. by same. Is it not now, and has it not been for many years past, cleared and improved?

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A. It has been cleared for many years.

Q. by same. Is there any think remarkable in the ground, by which you could identify the spot?

A. It stood upon a little ridge by a road side.

Q. by same. In what direction did said road run? did it not run from the four sugar trees, by the said dogwoods, nearly parallel to the first line of said Taliaferro's survey?

A. It passed from said sugars to said dogwoods and elm, thence down to the place where James McConnell then lived.

Q. by same. Is there any marks or traces of said road now remaining?

A. I know nothing about said road at this time.

Q. by same. By what means are you now enabled to identify the spot where said dogwoods and elm then stood?

A. By means of the ridge, the road, Spencer's house, and the line leading to said corner, and the stake set by Francis Baldwin, and by often passing it, and charging my memory as to the spot where said corner stood.

Q. by same. To what line do you allude in the above statement?

A. To the first line in Taliaferro's survey.

Q. by same. Did not George Porter, who sold you the land whereon you now live, run and mark a line from said dogwoods and elm to a coffee tree, a white walnut, and two redbuds?

A. He did, but he told me that he did not sell to the outline, about which there was likely to be some difficulty.

Q. by same. Did he ever show you that outline?

A. No, but he told me that he called to run to a beech in the line of Dark's survey.

Q. by same. Did you ever hear any thing of a beech the marks of which were blazed out?

A. No, but he said that if there had been any except the one in Dark's line, it had been cut down and carried away.

Q. by same. Do you not reside on part of Taliaferro's survey? and has not a part of your claim been some time since in dispute?

A. Yes, I live on some part of said survey; and a part of my claim has been in dispute, in consequence of a claim set up by Gen. McArthur.

And further the deponent saith not.

his
JAMES × PORTER.
mark.

Sworn and subscribed before me, on the 22d day of July, 1822.

ALISON C. LOOKER,
Surveyor of Ross county.

At the same time and place came John A. Fulton, a witness for the defendant, who, being duly qualified, as the law directs, deposeth and saith: that, in 1806 or 7, he was at the place where the three dogwoods and elm is said to have stood, in company with David Hays; that, at that time, there was but one dogwood standing, as well as he recollects; that, about the year 1811, this deponent was again at the place where the corner formerly stood, at which time the trees were all gone; that there were some appearances of stumps where this deponent believes the corner formerly stood; that he set his compass on a course, and examined for the line, and found marked trees a short distance the other side of the new limestone road; that this deponent, previous to making the examination above stated, run and measured the line

from the place where he supposed the four sugar trees formerly stood, which sugar trees was supposed to be the beginning corner of Taliaferro's survey; the place above referred to as the spot where this deponent believes the dogwoods and elm formerly stood, is the same place where the most westerly stone now stands in Spencer's orchard; that this deponent then traced a line, running from said dogwood as far as there were timber to find marks upon in that direction; that said line passed through an old stable belonging to Robert McDill; that he stopped running said line on the south side of the old limestone road.

Question by plaintiff. What induced you to run the lines above mentioned?

Answer. It was at the request of Gen. McArthur.

Q. by same. At the time of running the above line, did Gen. McArthur inform you whose line it was that you were running?

A. He informed me that it was his impression that said line I was then running was the line of Taliaferro's survey.

Q. by same. At the time you were running the line above mentioned, had yon the copy of Taliaferro's patent, or a copy of Taliaferro's survey?

A. I had not a copy of the patent, but he had a copy of the survey, which I supposed to be correct.

Q. by same. When you were running the above line did you aim to strike the beech in Dark's line?

A. I did not know anything about the beech—the only object we had in view was to ascertain the true line of Taliaferro's survey.

And further this deponent saith not.

JOHN A. FULTON.

Sworn and subscribed before me, this 22d day of July, 1822.

ALISON C. LOOKER,
Surveyor of Ross county.

Deposition No. 4, referred to in the aforegoing diagram of Alison C. Looker, is in the words and figures following, to wit:

UNITED STATES SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff.
against
DUNCAN MCARTHUR, defendant.
} *In ejectment.*

The deposition of Francis Baldwin, a witness for plaintiff, being of lawful age, and duly sworn, deposeth and saith: that, in the year 1798, he purchased the land lying on the southeasterly end of Nicholas Taliaferro's survey; that the three dogwoods and elm which stood where the most easterly stone in Jesse Spencer's orchard now stands, and this day pointed out to the surveyor for Ross county, were then all standing and marked as corners; that those trees continued to stand for seven or eight years, when, by cutting and hacking by some persons, they became decayed, and fell down; that one of the dogwoods remained for some time with the but on the stump, partly broken off; that, at this time, he stuck a stake where the trees stood, which stake remained for upwards of one year; that he often traced the line running to said dogwoods and elm, for the purpose of keeping the same in remembrance, which line was run by George Porter at the time I purchased,

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but run and marked said line some time previous, running in a northerly direction, agreeably to the deed for the land I purchased of said George Porter.

And further saith not.

FRANCIS BALDWIN.

Sworn and subscribed before me, the surveyor of Ross county, 23d July, 1822.

ALISON C. LOOKER.

The defendant objects to the taking of the above deposition on the ground of interest.

Deposition No. 5, referred to in the aforegoing diagram of Alison C. Looker, is in the words and figures following, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff. } *In ejectment.*
against
DUNCAN MCARTHUR, defendant. }

The deposition of Michael Thomas, a witness for the plaintiff, who, being of lawful age and duly sworn, deposeth and saith: that, some better than 26 years ago, he, this deponent, in company with Nathaniel Massie, traced a line from the Scioto river, passing the beech this day shown to the surveyor of Ross county; that said Massie, in tracing said line, had passed said beech when this deponent discovered it, and called to said Massie, informing him that there was a corner; that said Massie observed that they had nothing to do with said corner at that time; that this deponent then asked said Massie whose corner the beech was; that said Massie informed him that it was Nicholas Taliaferro's corner; that they then continued tracing said line; that, some short time after passing the beech aforesaid, he, this deponent, together with said Massie, went to the corner where a stone is now planted in Jesse Spencer's orchard; that said Massie set his compass near a leaning dogwood; that this deponent asked said Massie where he was going to run; that said Massie stated that he was going to run a line to that beech he, this deponent, had shown to him in Dark's line; that this deponent then observed to said Massie that the course the compass then pointed would not strike the beech before mentioned; that said Massie asked this deponent whether he knew better than the compass; that this deponent answered that he did not know anything about the compass, but he knew that the course it then pointed would miss the beech a quarter of a mile or more; that said Massie then commenced running said line, and continued the same until he discovered his mistake, when he ceased running near the bank of a small drain; that this deponent then asked said Massie if they should have to go back and run the line over again; that Massie answered, No, we have work to do up the creek; we will run that line over again at some other time; that they then went up the creek, and this deponent does not know whether said Massie ever run said line over again.

Question by defendant. You say that you traced a line from the run; will you say from what place you started?

Answer. From some cottonwoods, marked as a corner, on the river, above where the steam mill now stands, perhaps 200 yards.

Q. by same. Was the beech corner before spoken of fresh marked?

A. No, it appeared to have been marked some two or three years.

Q. by same. Did you, at the time you were with Massie at the beech, discover the cross line that passes by said beech?

A. No.

Q. by same. How far did you continue the line you ran from the corner in Spencer's orchard?

A. Until Massie had run more than the distance he calculated would reach Dark's line, when he quit near the bank of a small drain that runs in the north fork near Gen. Manary's present place of residence.

Q. by same. Will you state where the line above referred to passed up the north fork?

A. It passed a small distance east of George Porter's improvement, which he first made, where the widow Dolly now lives, about sixty yards eastwardly of said improvement.

Q. by plaintiff. Have you any doubt the beech above referred to being the same that Massie showed to you at the time above referred to?

A. No, I am sure it is the same tree that Massie told me was the corner of Taliaferro's survey.

Q. by defendant. Do you recollect how the beech was marked at the time you first saw it?

A. I do not, but it was marked as a corner, as I believe.

Q. by same. Will you state how the beech appears to be marked now?

A. It appears now to be marked with four notches on three sides.

Q. by same. How far were you and Massie from said beech when the conversation took place?

A. Massie was about one pole in a northwesterly direction from the beech, and I was about one pole and eight or ten links in a northeasterly direction, and we were about forty links asunder; that neither of us went up to the tree, or examined it closely.

Q. by plaintiff. Did you not examine it sufficiently to ascertain that it was a corner?

A. Yes, and I believe it was then marked as it is now.

And further the deponent saith not.

MICHAEL THOMAS.

Sworn and subscribed before me, this 23d day of July, 1822.

ALISON C. LOOKER,
Surveyor of Ross county.

Deposition No. 6, referred to in the aforegoing diagram of Alison C. Looker, surveyor of Ross county, is in the words and figures following, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plff.
against
DUNCAN MCARTHUR, defendant.
} *In ejectment.*

The deposition of James Menary, a witness for plaintiff, who, being of lawful age, and duly sworn as the law directs, deposeth and saith: that, in the fall of 1796, this deponent called upon Nathaniel Massie, who was then camped on the bank of the North fork, near to the place where Jacob Wolf

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now lives, for the purpose of having a tract of land run off that said Massie had previously sold to this deponent; that said Massie started and run a line up the creek, and made a corner; that he then run a line to the old line, so called at that time, when he made a corner nearly opposite to the place where McCrary now lives; that said Massie then directed this deponent to trace said line, and he would find a hickory and two dogwoods, which he did, and found them, and he believes them to be the same now shown to the surveyor of Ross county. This deponent further states, that Massie informed him that said hickory and dogwoods were the corner of Nicholas Taliaferro's survey, in the old line, which line he has since understood to be Dark's line.

Question by defendant. How would you describe the dogwoods at this time?

Answer. I should call them two dogwoods from one root.

Q. by same. Have you any recollection as to the smallest of the dogwoods being marked at the time you first visited it.

A. I do not recollect to have seen any marks upon the smallest of the two at that time, which was about as large as a man's thumb, and the largest was about as large as a common Jacob staff, to the best of my recollection.

Question by same. Have you not understood, from the deed from Thomas Worthington to James McCrary, and from other sources, that said dogwoods and hickories were a corner of Dark's survey?

A. I have so understood.

Q. by same. Does the deed you refer to call for two dogwoods and a hickory, or for only one dogwood and a hickory? and have you so understood it when called for as Dark's corner?

A. The deed calls for said corner as consisting of but one dogwood and a hickory, and I know nothing further than is contained in said deed.

Q. by plaintiff. Have you always understood that Dark's corner and Taliaferro's corner were upon the same ground and upon the same trees?

A. I have so understood it ever since I was acquainted with said corner.

Q. by same. Did Massie, in his deed to you, call for the two dogwoods and hickory as Nicholas Taliaferro's corner?

A. He did.

Q. by defendant. Will you state how long the corner hickory and dogwood appeared to have been marked when you first saw it?

A. It appeared to have been marked some time, but how long I cannot tell; it did not appear fresh.

Q. by same. How long has it been since you settled on the land you bought of Massie, as before mentioned?

A. It was in the year 1800.

JAMES MENARY.

Sworn and subscribed this 24th day of July, 1822, before me on the premises.

ALISON C. LOOKER,
Surveyor for Ross county.

At the same time and place came Michael Thomas, who, having been duly sworn as the law directs, deposeth and saith: that, at the same time he passed the beech corner mentioned in his former deposition, he came with Massie to the hickory and dogwood now shown to the surveyor for Ross county; that Massie informed him (this deponent) that said corner was a corner of Nicholas Taliaferro's survey, and that he has ever since so understood it.

Question by defendant. Can you recollect at what time of the year you were at this corner, and at the beech above referred to, with Massie, and who were present at that time, besides Massie and yourself?

Answer. It was better than twenty-six years ago; but who were present beside Massie, I cannot tell; but there were a company sufficient to survey, to wit, chaincarriers, markers, &c.

Q. by same. You say that you turned to the northwest of this place to make some surveys?

A. Yes; but what surveys we made I cannot tell, nor whether I was acting in the capacity of a chainman, marker, or hunter.

Q. by plaintiff. When you was with Massie, did you act as marker or chainman?

A. I was generally engaged in hunting for said Massie, but sometimes I carried chain, and sometimes marked, when a sufficient number of hands could not be procured without me.

Q. by same. When you were at the beech referred to in your depositions taken yesterday with Massie, do I understand you also to mean that there were others belonging to the surveying party present?

A. The residue of the party were a small distance behind where Massie and myself were at the beech, and did not come up before we had left it.

Q. When you say that you came from the beech to the dogwood, were you surveying, or tracing lines only?

A. We were tracing lines only.

Q. by defendant. Do you think the party overtook you before you came to the hickory and dogwood?

A. I do.

Q. by same. Were they sometimes before you and sometimes behind, or were they not often changing their position?

A. They were frequently changing their position.

Q. by same. Can you point out any other spot or part of the line where the company were either before or behind you?

A. I cannot state in particular.

Q. by same. Do you recollect who or what were the names of the hands that Massie had in his employ as chaincarriers or markers during the spring of the year, previous to the time of passing the beech above referred to?

A. I do not recollect the names of any of the hands then employed.

And further the deponent saith not.

MICHAEL THOMAS.

Sworn and subscribed before me, this 24th day of July, 1822, on the premises, as the law directs.

ALISON C. LOOKER,
Surveyor for Ross county.

At the same time and place, James Porter, who, being of lawful age and duly sworn, deposeth and saith: that he came to the corner, two dogwoods and hickory, in 1798, with George Porter, some time in the latter part of April or first May; that said Porter informed this deponent that said hickory and dogwood was a corner of Nicholas Taliaferro's survey, and that they stood in Dark's line; that shortly after, said Porter informed him that said hickory and dogwoods were a corner of Dark's survey; that said George Porter then took this deponent along Taliaferro's line to a double elm and a redbud, on the bank of the north fork, a short distance below the bridge across said creek, where he started, the line crossed said north fork.

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Question by plaintiff. At the time you first saw said dogwoods, how would you describe them, and how were they marked?

Answer. I should describe them as being two from one root, and I think, from the best of my recollection, that both were marked at that time; the small one was so small that it could not have been marked with a hatchet, but it had the appearance of having been marked with a knife or some such instrument. I do not think that the smallest of the two dogwoods was larger than a man's thumb. And further deponent saith not.

his
JAMES ⋈ PORTER.
mark.

Sworn and subscribed before me, this 24th day of July, 1822, on the premises, as the law directs.

ALISON C. LOOKER,
Surveyor of Ross county.

Deposition No. 7, referred to in the foregoing diagram of A. C. Looker, surveyor for Ross county, is in the words and figures following, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plaintiff,
against
DUNCAN MCARTHUR, defendant.
} *In ejectment.*

The deposition of James Porter, a witness for the plaintiff, taken upon the premises, as the law directs, who, being of lawful age, and duly sworn, deposeth and saith, that he came to the spot where a sugar tree and maple formerly stood, with George Porter, in the year 1798; that the said trees were then standing, marked as a corner, and were shown to him by said George Porter as the corner of Nicholas Taliaferro's survey; and that the stone now standing at said place, to the best of his recollection, on the same place where said trees formerly stood; that some years after this, this deponent was at the spot where said trees formerly stood, at which time they were down and gone. And further the deponent saith not.

his
JAMES ⋈ PORTER.
mark.

Sworn and subscribed this 24th day of July, in the year 1822, before me.

ALISON C. LOOKER,
Surveyor for Ross county.

Deposition No. 8, referred to in the foregoing diagram of A. C. Looker, surveyor for Ross county, is in the words and figures following, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plaintiff,
against
DUNCAN MCARTHUR, defendant.
} *Ejectment.*

The deposition of Michael Thomas, a witness for the plaintiff, who, being of lawful age, and duly sworn, as the law directs, deposeth and saith, that this deponent went with Nathaniel Massie to a dogwood where a stone is now standing in Jesse Spencer's orchard; that said Massie set his compass,

and this deponent then asked him where he was going to run; that Massie said he was going to run to that beech that he, this deponent, had shown to him in Dark's line; that this deponent then observed that the course that the compass pointed would not strike the beech; that Massie asked this deponent if he knew better than the compass; this deponent answered, No, I do not know anything about the compass, but I know that that course will miss it a quarter of a mile, if not more; that said Massie then run and continued until he had arrived at a small sugar tree on the bank of a branch, when they threw down their sticks and quit, which point is now shown to said Looker, surveyor for Ross county; that the deponent believes the tree now shewn to be the very tree where he quit.

Question by defendant. Can you inform me who were in company when this line was run?

Answer. I cannot recollect.

Q. by same. Were not these hands above referred to encamped with you and Gen. Massie for weeks when the party were together?

A. The company generally encamped together.

Q. by same. Was you acquainted with Nicholas Taliaferro previous to Massie and yourself being at the beech corner to which you refer in your deposition before taken?

A. I was not acquainted with him previous to that time: I believe it was the year afterwards.

Q. by same. Was you acquainted with his brother William, or any of the name, previous to that time, to wit, the year you were at the beech in Dark's line first with Gen. Massie?

A. No.

Q. by same. Do you suppose that the line leading from the dogwood in Spencer's orchard to this place was a straight line?

A. I do.

Q. by same. What work did you do first after leaving the sugar tree where you say you threw down your sticks and quit?

A. We went up the creek and surveyed Darlington's survey, and others, as Massie informed me.

Q. by same. Can you tell where any of the lines or corners of Darlington's survey, or others, that you say you run up the creek, can be found?

A. No, I cannot.

Q. by defendant. Did you mark or carry chain at the running of the line from Spencer's orchard to this place?

A. I neither carried chain or marked, but I hunted for said Massie.

And further the deponent saith not.

MICHAEL THOMAS.

Sworn and subscribed before me, on the premises, as the law directs, this 25th day of July, 1822.

ALISON C. LOOKER,
Surveyor for Ross county.

At the same time and place came James Manary, who, being duly sworn as the law directs, deposeth and saith: All I know about the line in question I got from Michael Thomas; that about twenty or twenty-one years since, this deponent discovered the line in question, and became alarmed about it; that he shortly after met with said Thomas, and asked him if he knew anything concerning said line; that said Thomas informed him that

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Massie had run the line in question, and stopped near a small branch, when they threw away their sticks; this deponent further states, that he had found the sticks previous to the time that he made the inquiry of said Thomas, and that the spot now shown to the surveyor for Ross county is the same place above referred to. And further the deponent saith not.

JAMES MANARY.

Sworn and subscribed before me, this 25th July, 1822.

ALISON C. LOOKER,
Surveyor for Ross county.

The above deposition is objected to by the defendant, on the score of its being hearsay evidence, the witness being present.

Deposition No. 9, referred to in the foregoing diagram of A. C. Looker, surveyor for Ross county, is in the words and figures following, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JOHN STILES, on the demise of Wesley Shipley Porter, plaintiff,
against
DUNCAN MCARTHUR, defendant.
} *In ejectment.*

The deposition of Isaac Davis, a witness for the defendant, who, being of lawful age, and duly sworn the truth to speak, deposeth and saith, that some time in the year 1799, he was called upon by Nathaniel Massie to run the line of Nicholas Taliaferro's survey, now enclosed in Jesse Spencer's orchard; that they run the patent course of said survey until, as this deponent thinks, they had nearly run out the distance called for; that he was then called by George Porter and Duncan McArthur, (who were both present,) and informed that they had found a beech; that this deponent went to them, and found a beech, which appeared to have been marked as a corner; that the marks appeared to have been marked out some short time before; that the chips were not colored by age, but that the old tomahawk marks were plainly discoverable by examination in the chips; that said beech was on the east side of the line run, some twenty, thirty, or forty steps, near the bank of a small drain, and, to the best of his recollection, near the spot this day pointed out to the surveyor of Ross county; that some time previous to running the line aforesaid, said Massie came to this deponent, and informed him that he wished him to run the line aforesaid to said beech, and examine the same particularly, as the marks had been recently marked out; that this deponent understood from Massie that the beech aforesaid was a corner of said Taliaferro's survey; and further, that, at the time of the examination of said beech, George Porter was present, and refused to run the beech as the corner of said survey (of which he was the proprietor) in its then situation; that said Massie informed this deponent that he had previously been at the beech, and that the object he had then in view in having the line run, was, that this deponent might examine the beech in its then situation, and by that means perpetuate the evidence respecting it; that he, this deponent, found the beech in the same situation he expected to find it from the information he had received from said Massie.

Question by plaintiff. Did Gen. Massie inform you that you would find the beech above referred to in Dark's line?

Answer. I do not recollect that he did.

Q. by same. Did Massie say any thing about Dark's line?

A. I do not recollect that he did specially.

Q. by same. Did you find a marked line on the course you run from the corner in Spencer's orchard?

A. I did not.

Q. by same. How long has it been since you saw the beech before spoken of?

A. I have never seen it since the time I was first at it in 1799, to the best of my recollection.

Q. by same. Of what size was the beech when you saw it?

A. I think it was from one foot to fifteen inches in diameter.

Q. by same. Have you not at this time traced all the ground over around about where you think the beech stood? and can you find any vestige of it remaining?

A. I have traced the ground over, and cannot find any vestige remaining.

Question by same. Did you go to Dark's line at the time you were at the beech before spoken of?

A. I think we did go to Dark's line, and my impression is, that it was about twenty poles from the beech to said line.

Q. by same. Did you see any other beech at that time near the beech before spoken of?

A. I do not recollect of seeing any other beech in the neighborhood.

Q. by same. Is there part of the ground by which you could recognise the spot where said beech stood without the assistance of the compass?

A. I do not think I could determine whether the beech stood on this drain or another, without first ascertaining where the course would run by the compass.

Q. by same. Did Massie inform you, when he first applied to you to run the line aforesaid, that the marks in the beech were defaced?

A. It is my impression that he did so inform me.

Q. by defendant. In running said line, do you or do you not remember to have passed near a large walnut pointed out to you last evening by Robert McDill?

A. I do recollect passing said walnut, and it is my impression that there was a fence near it at that time.

Q. by plaintiff. After you had run the line for Massie, and made your return to him, what remarks did he then make?

A. I do not recollect that he made any remarks about the matter.

Question by defendant. Did you not do business for Gen. Massie as a surveyor for a considerable time?

A. I frequently done business for Massie as a surveyor.

Q. by same. Was Massie in the habit of making communications to any person relative to his business as a surveyor, or relative to lines or corners, &c.? or was he not, on the contrary, rather reserved on that subject?

A. He was very reserved to me on those subjects.

Question by plaintiff. Have you, since you were called on by Massie the second time, ever heard any thing relative to said beech corner?

A. I do not recollect to have heard any thing since that time about said matter until very lately. And further the deponent saith not.

ISAAC DAVIS.

Sworn and subscribed before me, the surveyor for Ross county, this 26th day of July, 1822.

ALISON C. LOOKER,
Surveyor for Ross county.

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The lands between a right line from the point A to the point V, a right line from the said point V to point C, and a right line from the said point C to the said point K, to the beginning of the said parcel, all appearing on the said diagram, as to which parcel he asked leave to enter into the common rule, plead to issue, and proposed to go to trial; but the court then and there refused to give leave to withdraw the said former plea; to which opinion and refusal of the court the counsel of the defendant excepts, and prays that the same exception be sealed and enrolled according to law, and made part of the record, which is accordingly done.

JOHN McLEAN, [SEAL.]
22*d July*, 1829. J. W. CAMPBELL, [SEAL.]

During the progress of this cause, the defendant, by his counsel, tendered a further bill of exceptions to the opinion of the court upon the point in said bill of exceptions mentioned, and prayed that the same might be signed, sealed, and enrolled, and made a part of the record in this cause, which is accordingly done. Which said bill of exceptions is in the words and figures following:

PORTER, lessee, *vs.* DUNCAN McARTHUR.

Be it remembered, that upon the trial of the issue joined in this cause, in order to prove title in himself for part of the premises in the plaintiff's declaration mentioned, the defendant offered to give in evidence an exemplification of a judgment recovered before the late general court of the territory of the United States northwest of the river Ohio, held at Marietta, in the now State of Ohio, on the third Tuesday of October, 1802, by Nicholas Taliaferro against Peter Porter, administrator of George Porter, deceased, in debt, which is in the following words and figures, to wit:

Pleas held at Marietta, in the territory of the United States northwest of the river Ohio, on the third Tuesday of October, in the year of our Lord one thousand eight hundred and two, before the honorable the Judges of the general court for said territory:

NICHOLAS TALIAFERRO *vs.* PETER PORTER, admr. of George Porter, dec'd. } *In debt.* *In the general court.*

Territory of the United States northwest of the river Ohio, October term, 1802, *of the general court, held at Marietta.*

TALIAFERRO *vs.* PORTER, admr. } *Debt.*

Nicholas Taliaferro complains of Peter Porter, in custody, &c. administrator of all the goods and chattels, rights and credits, of George Porter, deceased, (formerly of Baltimore county, in the State of Maryland, but late of Ross county, in the territory aforesaid,) in a plea that he the said Peter, administrator as aforesaid, render to him the said Nicholas five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, current money of the United States, which he, the said Peter, unjustly detains from him, the said Nicholas; for that whereas the said George Porter, in his lifetime, to wit, on the 8th day of May, in the year one thousand seven hundred and ninety-nine, by his certain writing obliga-

tory, signed with his hand, and sealed (according to the custom and law of the State, to wit, Kentucky, where the same was made) with his seal, and to the court now shown, the date of which is the same day and year aforesaid, acknowledged himself to be held and firmly bound unto the said Nicholas Taliaferro, his heirs, executors, and administrators, in the sum of five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, for which payment he bound himself, his heirs, executors, and administrators: nevertheless the said George Porter in his lifetime, and the said Peter after the death of the said George, the said five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six cents and two-thirds of a cent, although often required, to wit, on the twenty-fifth day of December, in the year 1800, and often since, have not, nor hath either of them, paid to the said Nicholas Taliaferro, the said sum, or any part thereof, but have hitherto refused; and the said Peter, administrator as aforesaid, doth yet deny to pay him the same, and unjustly detains the same, to the damage of the said Nicholas four hundred dollars; and therefore he produces this suit.

JOHN S. WILLS, *for pltff.*

Nicholas Taliaferro puts in his place John S. Wills to prosecute.

NICHOLAS TALIAFERRO.

J. DOE, } *Pledges this suit.*
R. ROE, }

At which day the plaintiff came; and the defendant, being solemnly called, came not; whereupon the said plaintiff prays judgment. Therefore it is considered by the court here that the said plaintiff do recover his debt aforesaid, to wit , $, by reason of the premises, against the said Peter Porter, administrator of George Porter, deceased; as also $ more, in damages, as well for the detention of that debt as for his costs and charges by him expended in that behalf; and that the said plaintiff have execution thereof against the estate of the said George Porter, deceased.

I do certify the aforesaid to be a true copy, taken from the records of this office. In testimony whereof, I place my signature, and annex the seal of office, the 20th day of August, in the year of our Lord eighteen hundred and three.

[SEAL.] WM. McFARLAND, *Clk. S. C. P. T.*

And an exemplification of a certain writ of execution issued thereon, of October term of said court, in the year 1802, in these words and figures, viz:

Territory of the United States northwest of the river Ohio, sct. The United States to the sheriff of Ross county, greeting:

We command you that of the goods and chattels of Peter Porter, administrator of George Porter, deceased, in your bailiwick, which remains in his hands to be administered, you cause to be made nine hundred and thirty-three dollars and thirty-three cents debt, which Nicholas Taliaferro before us, in our general court, recovered against him as administrator; as also one hundred and twenty-one dollars eighty-three cents, in damages, as well for the detention of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said Peter is convict, as appears to us of record, if so much goods and chattels can be found, if not, then that you make the same of his lands and tenements in your bailiwick, of the said

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George Porter, deceased; as also fifty cents more for this writ of fi. fa. and leva fa.; and have that money ready before us at Cincinnati, in our general court, on the third Tuesday of March next, to render to the said Nicholas Taliaferro his debt and damages aforesaid, and satisfy yourself your own fees; and have then there this writ.

Witness the Hon. John Cleves Symmes, Esq., one of the Judges of the general court, at Marietta, in our term of October, 1802.

WM. McFARLAND, *Clk. G. C.*

And of the sheriff's return thereon in these words, viz: Nulla bona. Levied upon 452 acres of land, condemned to be sold by a jury of twelve men, empannelled and sworn according to law. Not sold for want of time.

JER. McLENE, *Shff. Ross co.*

The State of Ohio, Ross county, sct. I, John McDougal, clerk of the supreme court for said county, do hereby certify that the foregoing is a correct copy of the execution, and endorsement thereon, now filed in my office. In witness whereof, I have hereunto set my hand, and have affixed my seal of office, at Chillicothe, this 31st December, 1808, and the seventh year of this State.

[SEAL.] JOHN McDOUGAL, *Clk. S. C. R. C.*

Also, an exemplification of a certain writ of venditioni, issued upon the said return, in these words, to wit:

The State of Ohio to the Sheriff of the county of Ross:

You are hereby commanded that you expose to sale the lands and tenements of George Porter, deceased, which, according to our command, you have taken into your hands, and which remain unsold, as you have certified to the Judges of the supreme court for the State of Ohio, to satisfy Nicholas Taliaferro nine hundred and thirty-three dollars and thirty-three cents, debt, which in our late general court he recovered against Peter Porter, administrator of the said George Porter, deceased; as also one hundred and twenty-one dollars and eighty-three cents, and twenty-five cents, as well for the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said Nicholas recovered execution against the said Peter, as administrator, as aforesaid, by virtue of a judgment in the said general court; and that you have the same before the Judges of the supreme court next to be holden within and for the said county of Ross, on the first day of the term, then and there to render unto the said Nicholas of the debt, damages, and costs aforesaid.

Witness Return J. Meigs, jr., presiding Judge of our said court, this 15th day of November, 1803.

WM. R. DICKINSON, *Clk.*

Together with the sheriff's return on the last mentioned writ, in these words, to wit:

NICHOLAS TALIAFERRO *vs.* GEORGE PORTER, admr. } *Ve. exponas.*

Debt - - -	$933 33	I have the money ready.
Damages - - -	162 66⅔	JER. McLENE.
Costs G. C. - -	18 66⅔	
Do S. C. - - -	25	Sold 452 acres land to D. McArthur, for $1,521. December 7th, 1803.
Interest from 19th Oct. 1802		
Shff's fees, as endorsed on fi. fa.	41 77	JER. McLENE.
	1,177 52½	

The State of Ohio, Ross county, sct.

I, John McDougal, clerk of the supreme court for Ross county, do hereby certify that the foregoing is a true copy from the original execution, and the several endorsements thereon, filed in my office. In testimony whereof, I have hereunto set my hand, and have affixed the seal of office, this 3d January, 1809, and 7th year of this State.

[L. S.] JOHN McDOUGAL, *Clk. S. C. R. C.*

And also an official copy of a deed executed by the sheriff to him, bearing date the 19th December, 1803, 452 acres, more or less, of the lands in the said declaration contained; which said deed is in the words and figures following, to wit: This indenture, made this nineteenth day of December, in the year of our Lord one thousand eight hundred and three, between Jeremiah McLene, sheriff of Ross county, of the one part, and Duncan McArthur, of the county aforesaid, and State of Ohio, of the other part, witnesseth, that whereas Nicholas Taliaferro, lately before the Judges of the general court of the territory northwest of the Ohio, viz. at Cincinnati, at the term of October, in the year of our Lord one thousand eight hundred and two, did recover by judgment of said court against Peter Porter, administrator of all and singular the goods, chattels, rights, and credits of George Porter, deceased, as well a certain debt of nine hundred and thirty-three dollars and thirty-three cents, as also one hundred two dollars sixty-six and two-thirds cents, for the detention of that debt, and other sums for his costs and charges by him about his suit in that behalf expended, whereof in the said court remaining more fully appears; and whereas the said Nicholas prosecuted on the judgment aforesaid, out of the court aforesaid, a certain writ of the territory, viz. a levari facias, to the sheriff of the said county of Ross directed, by which said writ it was commanded the said sheriff that of the goods and chattels, lands and tenements, which belonged to the said George Porter, deceased, at the time of his death, in the hands of the said Peter Porter, administrator as aforesaid, in his bailiwick, he should cause to be made the debt, damages, and costs aforesaid, if so much the said Porter had in his hands to be administered, and that he should have those moneys before the Judges aforesaid, at their next term, on a certain day now past, to render unto the said Nicholas for his debt, damages, and costs aforesaid, and also that writ; and whereas the said sheriff, by virtue of the said writ of levari facias, to him directed as aforesaid, did return that he had taken and secured a tract of land containing four hundred and fifty-two acres, situated on the north fork of Paint creek, there being no goods and chattels of the said George in his bailiwick in the hands of the said Peter to be administered; which tract of land not being sufficient by the rents and profits in five years to satisfy debt, damages, and costs aforesaid, as has been certified by an inquest of twelve lawful men summoned and sworn for that purpose; and whereas the said Nicholas afterwards prosecuted on the judgment and return aforesaid, out of the supreme court of the State of Ohio for the county of Ross aforesaid, a certain writ of the State, called a venditioni exponas, to the sheriff aforesaid directed; and whereas the said Jeremiah McLene, of Ross county aforesaid, in pursuance of the said writ of venditioni exponas, and according to the law in such cases made and provided, and the provisions and requisitions therein contained, having legally advertised and made known the same, did, on the seventeenth day of December, in the year one thousand eight hundred and three, in the town of Chillicothe, in the county

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aforesaid, expose to sale by public vendue or auction the aforesaid tract or parcel of land, with the appurtenances to the same belonging, and all the estate, right, title, property, claim, and demand whatsoever of him, the said George Porter, at the time of his death, into and over the same; and wherefore the said Duncan McArthur did then and there bid for the same one thousand five hundred and twenty-one dollars, and no person bidding more, the said tract of land and premises, with the appurtenances, was in due manner openly struck off and sold to the said Duncan McArthur, for the said sum of one thousand five hundred and twenty-one dollars; therefore, to confirm the said purchase to the said Duncan McArthur, so as aforesaid made, this indenture witnesseth, that the said Jeremiah McLene, sheriff of Ross county aforesaid, for and in consideration of the sum of one thousand five hundred and twenty-one dollars, to him in hand paid by the said Duncan McArthur, the receipt whereof is hereby acknowledged, and by virtue of a law of the territory aforesaid, hath given, granted, bargained and sold, conveyed and confirmed, unto the said Duncan McArthur, his heirs and assigns for ever, all that said tract or parcel of land, containing four hundred and fifty-two acres, lying in the county of Ross, and on both sides of the north fork of Paint creek, being all that part of Nicholas Taliaferro's survey number two thousand two hundred and seventeen, which said George Porter possessed at the time of his death, adjoining the southwesterly lines of Andrew Porter's one hundred and fifty acres, southwesterly and southeasterly lines of Joshua Porter's two hundred and forty acres, and the westerly lines of the survey on which said McArthur now lives, and the northeasterly, northwesterly, and southwesterly of James and Robert McDill's one hundred and forty acres; and from said McDill's southerly corner southwestwardly with James Porter's line to the southwesterly line of Taliaferro's said survey; thence with said line northwestwardly, and the other lines of the original survey, to the lower line of the survey on which William Rodgers now lives, and adjoining the same, containing, as aforesaid, four hundred and fifty-two acres, be the same more or less, with all the privileges and appurtenances to the same belonging, or in any wise appertaining, with all the estate, right, title, interest, property, claim, and demand, of the said George Porter, at the time of his death, into and over the same and every part thereof: to have and to hold all and singular the above granted and bargained premises and appurtenances, to the said Duncan McArthur, his heirs and assigns, to the only proper use, benefit, and behoof of him, the said Duncan McArthur, his heirs and assigns for ever, in as full and ample a manner as I, the said Jeremiah McLene, sheriff aforesaid, by virtue of the authority aforesaid, might, could or would or ought to convey the same.

In witness whereof, I, the said Jeremiah McLene, sheriff of Ross county, have hereunto set my hand and seal, at Chillicothe, the day and year first within written.

JER. McLENE, [SEAL.]
Shff. Ross county.

Signed, sealed, and delivered, in the presence of us:
MICHAEL THOMAS, LEVI SIAWELL.

State of Ohio, Ross county, ss.—Personally appeared before me, a justice of the peace in and for said county, the within named Jeremiah McLene, sheriff of said county, and acknowledged the above signing and seal-

ing to be his act and deed, for the use and purposes therein mentioned. Given under my hand and seal this 10th day of February, 1804.

WILLIAM CREIGHTON. [SEAL.]

Rec'd. 13th Feb., 1804.

The State of Ohio, Ross county, ss.—I, Samuel Tagart, recorder in and for the county aforesaid, do hereby certify that the foregoing is a true copy of the deed from Jeremiah McLene, sheriff of said county, to Duncan McArthur, as it remains of record in book G, pages 107, 108, 109, and 110.

In testimony whereof, I have hereunto set my name, and affixed the seal of my said office, at Chillicothe, this 27th day of October, 1827.

[SEAL.] SAML. TAGART,
Recorder.

Which land was sold to him, the said defendant, by the said sheriff, in pursuance of the said executions, and which land appears on A. C. Looker's report and diagram, filed in this cause, to be described by red lines. (See diagram in the preceding bill of exceptions.) But the court being of opinion that, by the judgment, writs, returns, levies, sale, and deed aforesaid, the lessor was not divested of his title, rejected the said evidence; to which opinion of the court the defendant, by his counsel, excepts, and prays that such his exceptions be sealed, enrolled, and made part of the record, according to law. All which is done accordingly.

JOHN McLEAN, [SEAL.]
J. W. CAMPBELL, [SEAL.]

Upon the trial of this cause, the defendant, by his attorney, tendered a further bill of exceptions to the opinion of the court upon the point set forth in said bill of exceptions, and prays that the same may be signed, sealed, and enrolled, and made a part of the record in this cause; which is accordingly done, to wit:

THE LESSEE OF WESLEY S. PORTER
vs.
DUNCAN McARTHUR. } *In ejectment.*

Be it remembered, that, upon the trial of this cause of the matters in dispute, was to find and determine the northeastern boundary of the lands claimed by the plaintiff's lessor, under the grant to his father, George Porter, filed in this cause, to wit:

John Adams, President of the United States of America, to all to whom these presents shall come, greeting: Know ye, that in consideration of military services performed by Nicholas Taliaferro (a lieutenant for three years) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and another act of the said Congress, passed on the 9th day of June, in the year 1794, amendatory of the said act, there is granted by the said United States unto George Porter, assignee of the said Nicholas Taliaferro, a certain tract of land, containing one thousand four hundred and ninety acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing date the sixteenth day of June, in the

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year one thousand seven hundred and ninety-seven, and bounded and described as follows, to wit: survey of one thousand four hundred and ninety acres of land, on part of a military warrant, number eight hundred and fifty-four, in favor of the said Nicholas Taliaferro, (the whole thereof being for two thousand six hundred and sixty-six acres and two-thirds of an acre,) on the north fork of Paint creek, beginning at four sugar trees, corner to Thomas Lewis's survey, in Mayo Carrington's line, running with Lewis's line north seventy-nine degrees east, one hundred and six poles, to three dogwoods and elm; thence north thirty-one degrees west, nine hundred and thirty poles, to a beech in the line of William Dark's survey, number one thousand four hundred and forty-five; thence north, seventy-two degrees west, one hundred and twenty-four poles, to a hickory and two dogwoods; thence south, fifty-two degrees west, two hundred and forty-four poles, crossing the north fork of Paint creek at one hundred and eighty-six poles, to a maple and sugar tree on the west side of the north fork; thence south forty-five degrees east, forty-six poles, to two sugar trees; thence south forty degrees west, sixty poles, to two sugar trees, two beeches, and two dogwoods; thence south six degrees east, forty-six poles, to two sugar trees and two beeches, on a level in the line of Francis Coleman's survey, number five hundred and sixty-two; thence with said line of Mayo Carrington's survey, south fifty degrees east, nine hundred and five poles, crossing the creek at five hundred and ninety-three poles, to the beginning, with the appurtenances: to have and to hold the said tract of land, with the appurtenances, unto the said George Porter, his heirs and assigns for ever.

In witness whereof, the said John Adams, President of the United States of America, hath caused the seal of the United States to be hereunto affixed, and signed the same with his hand, at Philadelphia, the seventh day of August, in the year of our Lord one thousand seven hundred and ninety-seven, and of the independence of America the twenty-second.

[SEAL.] JOHN ADAMS.

By the President:

TIMOTHY PICKERING, *Sec'y of State.*

Nicholas Taliaferro was originally entitled to the bounty land within mentioned, as granted to the within named George Porter, who claims under the said Nicholas Taliaferro.

JAMES McHENRY,

War Office, Aug. 7, 1797. *Sec'y of War.*

I certify that the within and above are truly copied from vol. 1, page 157, of the records of patents granted to the Virginia line on continental establishment. In witness whereof, I have hereunto set my hand, at the city of Washington, and affixed the seal of the General Land Office of the United States this 6th of December, 1815.

[L. S.] JOSIAH MEIGS,

Commissioner of the Gen. Land Office.

To aid the parties on the trial of this question, the diagram and report of A. C. Looker, surveyor of Ross county, made pursuant to an order of this court entered in this cause, and filed among the papers, and which is made part of this bill of exceptions, (see report and diagram attached to and made a part of this transcript; the depositions are copied in a previous bill

of exceptions, immediately after the diagram,) was read to the jury, and commented on by the counsel on both sides; and when the jury, after their retirement the last time, returned into court, they returned their verdict in these words, to wit: "We, jury, find the defendant guilty of the trespass in the plaintiff's declaration mentioned, and do assess the plaintiff's damages to one cent, and that the plaintiff do recover of the defendant the land described as follows, viz: beginning at the stone planted in Spencer's orchard, designated on Looker's map (referring to the diagram and report aforesaid) by the letter B; thence running in a northwestwardly direction to a point in Dark's line, 124 poles; eastwardly on Dark's line from the point marked D on Looker's map, a hickory and dogwood; thence westwardly with Dark's line, 124 poles, to the hickory and dogwood aforesaid; thence running in a southwestwardly direction with Taliaferro's line to the place of beginning." Whereupon the counsel of the plaintiff moved the court to instruct the jury to find a general verdict; and thereupon the court did instruct the jury to find a general verdict, saying that the plaintiff would take possession at his peril; which general verdict was found by the jury accordingly; to which instruction of the court the counsel of the defendant excepts, and prays that the same exception be sealed and enrolled, and made part of the record according to law; which is done accordingly. Witness our hands and seals.

JOHN McLEAN, [SEAL.]
J. W. CAMPBELL, [SEAL.]

And afterwards, in this same term of July, to wit, on the twenty-eighth day of the same month, in the year last aforesaid, came the defendant by his attorney, and filed a certain bond, with security, conditioned for the prosecution to effect of a writ of error to the Supreme Court of the United States, and for the payment of all costs, &c.; and the court having seen said bond, are satisfied the same is sufficient; and it appearing to the satisfaction of the court that the property in controversy amounts in value to more than $2000, it is ordered that a writ of error be allowed, and that a citation issue upon the application of the defendant. Which said bond is in the words and figures following, to wit: "Know all men by these presents, that we, Duncan McArthur and William Doherty, are held and firmly bound unto the lessee of Wesley S. Porter in the sum of one thousand dollars, lawful money of the United States, for the true payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this 28th day of July, A. D. 1829. Whereas at the July term of the seventh circuit court of the United States in and for the district of Ohio, in the present year, in a certain action of ejectment then pending, wherein the lessee of Wesley S. Porter was plaintiff, and the said Duncan McArthur was defendant, the said plaintiff recovered the judgment of the said court against the said defendant in the matter aforesaid, on which said judgment the defendant has obtained the allowance of a writ of error from the Honorable John McLean, one of the Judges of the said circuit court, intending to prosecute the same in due form of law before the Supreme Court of the United States, and for so doing has offered the said William Doherty aforesaid to be bound with him as his security, in pursuance of the act of Congress in such case made and provided, which said security has been approved by the Judge aforesaid; now, therefore, the condition of the said obligation is such, that, if the said Duncan McArthur shall faithfully prosecute his said writ of error to effect, and if,

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also, in the event of the said judgment being affirmed by the said Supreme Court of the United States, he, the said Duncan McArthur, his heirs, executors, and administrators, shall well and truly pay all costs or moneys as may or shall be adjudged against him, then, and in that case, the above obligation to be void, otherwise to remain in full force and virtue.

Witness. [SEAL.]

WM. DOHERTY, [SEAL.]

On the back of the foregoing bond is the following endorsement, to wit:

"Approved: JOHN McLEAN,

Justice Supreme Court."

THE UNITED STATES OF AMERICA, DISTRICT OF OHIO, SCT.

I, William Miner, clerk of the seventh circuit court of the United States in and for the district of Ohio aforesaid, do hereby certify the foregoing to be a true transcript of the record, judgment, and proceedings thereon, in a suit determined in said court, in which the lessee of Wesley S. Porter is plaintiff, and Duncan McArthur defendant, as the same now stands among the files of my office. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this tenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, and of the independence of the United States of America the 54th.

[SEAL.] Attest: WILLIAM MINER, *Clerk.*

UNITED STATES' SEVENTH CIRCUIT.

JOHN STILES, on the demise of WESLEY SHIPLEY PORTER, plaintiff,
vs.
DUNCAN MCARTHUR, defendant. } *In Ejectment.*

In pursuance of an order of the above court, which is herewith enclosed, and agreeable to previous notice given to the defendant, I proceeded, on Monday, the 22d day of July, 1822, (both parties being present,) to survey and lay off the land in controversy in the above suit. First, agreeable to the directions of the plaintiff, beginning at the point marked A on the diagram annexed,* where four sugar trees formerly stood, agreeable to the testimony of Michael Thomas, Francis Baldwin, James Porter, and John A. Fulton, whose depositions, marked No. 1 and 2, relative thereto, are herewith enclosed; which sugar trees are called for as the beginning corner of Nicholas Taliaferro's survey, No. 2,217, under which the plaintiff claims. A sugar tree is yet standing at or near said point, marked as a corner tree, from which I took a block, and found it to have been marked twenty-seven years, including the present. I then run N. 79° E., 110 poles, to a stone at B; the ground is now cleared and enclosed in Jesse Spencer's orchard, shewn to me as the point where three dogwoods and an elm formerly stood, by Francis Baldwin, James Porter, and Michael Thomas, whose depositions relative thereto are herewith enclosed, marked No. 3 and 4. I then run N. 17° 37' W., 771 poles; at 160 poles, passed a hickory marked as a line tree, four poles and two-tenths on my left; which hickory and other trees on my left in said line (from which I took blocks) appears to have been marked 24 years, including the present; at 180 poles

* See original.

entered Francis Baldwin's field; at 430 poles passed out of the same, and crossed the lands claimed by the defendant, to a beech (at C) in the line of William Dark's survey No. 1,445, of 1,010 acres; which beech has the appearance of four hacks or marks on three sides thereof, corresponding with the lines of Dark's said survey, and also with the lines running from K to C; which beech is referred to in the deposition of Michael Thomas, marked No. 5. About one pole easterly from the beech an old line crosses Dark's line, the course of which is about N. 28° W., and is represented by the dotted line from 3 to 4. From the beech at C, in Dark's line, claimed by plaintiff as one of the corners of Nicholas Taliaferro's survey No. 2,217, I took the bearing of a beech, marked as a line tree, and found it to be north 35 links distant, from which beech a block was taken, which proved to have been marked 29 years, including the present year. From thence I run with Dark's line (correcting the course) N. 70° 37' W., 330 poles, to a hickory and two dogwoods growing from one root, on the side of a hill, at D; several of the trees in this last line I discovered to have been marked at two several times, exhibiting four hacks on each side of said trees; the first or oldest marks appeared to have been made 27 or 28 years since, the last or youngest marks appeared to have been made 24 years since. The dogwood and hickory at D were shewn to me by James Manary, James Porter, and Michael Thomas, whose depositions relative thereto are herewith enclosed, marked N C. I then run what was shewn to me as the upper line of Taliaferro's said survey, and was accompanied by the defendant no further than the point where the old lost line, running from B or E to P crosses the upper line of Taliaferro's survey, at O, and found it to be S. 52° 30' W., 314 poles, crossing the north fork of Paint creek at 256 poles, to where a maple and sugar tree is called for at E, referred to in the deposition of James Porter, marked No. 7, and herewith enclosed; thence I run S. 45½ E., 46 poles, to two sugar trees at F; thence S. 39½ W., 60 poles, to two sugar trees, two beeches and two dogwoods, at H; (two of the dogwoods and one sugar tree are dead;) thence S. 8° 16' E., 45 poles, to two sugar trees and two beeches at I. The last three corners at F, H, I, correspond exactly with the calls of the patent for Taliaferro's survey aforesaid, except that the last corner does not stand in the line of Francis Coleman's survey, as is represented in said patent. I then run S. 50° 50' E., 875 poles, crossing the north fork at 560 poles, to the beginning at A, and found by computation that the survey contains 2,140 acres. The last line from I to A appears to have been marked 25 years, including the present.

I then, at the request of the defendant, proceeded to the point K, the most vesterly corner or stone in Jesse Spencer's orchard, shewn by the defendant as the most southerly and beginning corner of his survey, No. 6,188, of 200 acres, in the name of Peter Manifold, and is referred to in the deposition of John A. Fulton, marked No. 3, and herewith enclosed. I then run with the line of Manifold's survey No. 6,188, N. 35 W., 337 poles; at about 80 poles, examined a blue ash in our line, and found it to have been marked 26 years. The line in which the ash appeared to stand bore to our left gradually until it was two or three poles distant. Shortly after, I discovered on my right what I supposed to be the line of Manifold's survey aforesaid, which line continued on our right, from two to three poles distant, until I arrived opposite two hickories and an ironwood, at L, southeasterly corner to Peter Manifold's survey No. 6,236, in the line of said

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Manifold's survey No. 6,188. I then ~~ran~~ N. 55 E., 3 poles and 15 links, to said corner at L, and continued with the line of survey No. 6,188 and 6,236, N. 34° 30' W., 503 poles, passing through the improvements of James Porter, Robert McDill, Joseph and Jacob McDill, as I was informed, and also through some of the improved land of the defendant, to a white oak and a sugar tree standing, and an elm stump, at M, shewn to me by the defendant as the northwesterly corner of his survey No. 6,188, in the name of Peter Manifold. From the corner at L, to the corner at M, I discovered no marks whatever of the proper description, although part of said line run through timbered land, in which many of the trees appeared to have been cut down and removed. I then, at the request of the plaintiff, continued the same course N. 34° 30' W., 135 poles, to Taliaferro's upper line, at N; at 92 poles passed a beach 4 poles on my right, variously marked with chops, hacks and blazes, together with the appearance of an Indian cut in the bark; the point N is 35 poles, S. 52° 30' W., from the point D. From N, I run S. 52° 30' W., 41½ poles, to O, where the old line, shewn by General Manary, and referred to in the depositions of said Manary and Michael Thomas, marked No. 8, crosses the upper line of Taliaferro's survey, as claimed by the plaintiff. I then run N. 36° 18' W., 80 poles, along an old marked line, to a sugar tree standing on the bank of a small drain marked as a line tree, at P, which line appeared to have been marked 27 years, including the present. I then returned to the white oak, sugar tree, and elm stump, at M, and run N. 52° E., 83 poles, to where a small ash is called for as the northeasterly corner of survey No. 6,188, at which place there is now marked a small ash and white oak, at R. The residue of the lines of said survey were protracted agreeably to the calls of the patent for said survey, which patent was dated October 12, 1812, and is herewith enclosed. I then returned to the point at S, in a line run from the point K, as I was informed by John Evans, former surveyor for Ross county, according to the courses given in the patent for Taliaferro's survey No. 2,217, for the second line, and run N. 31° 30' W., 102 poles, to a stake in Dark's line at T, said to have been set by Benjamin Hough, former deputy surveyor for Ross county. I then returned on the last mentioned line S. 31° 30' E., 70 poles, and run N. 58¾ E., 5 3/10 poles, to the point where it is said a beech formerly stood, marked as a corner, agreeable to the deposition of Isaac Davis, whose deposition, marked No. 9, is herewith enclosed; which point is represented by the letter V on the plat annexed I then went to the beech at C, and run with Dark's line S. 70° 37' E., 165 poles, to a white oak, hickory and elm, (the elm down) at X, corner to William Dark's survey No. 1,445, of 1,010 acres, and in the line of Ferdinand Oniel's survey No. 509; thence S. 74 W., 126 poles, to three hickories, two of them down and gone, at 2. I then proceeded to ascertain the bearing of the line from 3 to 4, and found it to be N. 29° 8' W., passing near the beech at C, to two hickories and a sugar tree at 5, from which corner an old line bears N. 71 E. From examination, this corner, and the lines coming to and running from it, appears to have been marked 29 years, including the present. I then proceeded, at the request of the defendant, to the lower corner, on the bank of Paint creek, of Mayo Carrington's survey No. 529, and corner to Thomas Lewis's survey No. 2,216, represented on the plat by the figure 6, and run with the corner of the last mentioned survey N. 50 W., 28 poles, to the figure 7, from which the stone at A bears N. 70 E., 43 links. If the beginning of Taliaferro's survey should

be established in the lower line of Carrington's survey No. 529, agreeable to the course of his line from corner to corner, it would fall at the point represented by the figure 8; which point is S. 75 W., 5 or 6 poles from the place pointed out by the witnesses.

Agreeable to the directions of the defendant, I protracted the line from the beech at C, and extended it to Jesse Spencer's orchard, which is represented by the dotted line C, 10, which line I examined and found it to have been marked 24 years, including the present; which marked line continues from C until within 15 poles of the intersection of Lewis's line at 10, and found that it intersected Lewis's line about 6 poles west of the stone at B, and about 2 poles west of the stone at K. I then proceeded to a point where three redbuds formerly stood, as shewn to me by Francis Baldwin as the northeasterly corner of the 167 acres of land which he purchased of George Porter; the redbuds are now entirely gone; from which point I run S. 31 E., 200 poles, being immediately at the commencement on Baldwin's marked line; at 149 poles I had departed from the marked line, leaving it on my left 39 links; at 182 poles passed an ash 16 links on my left, which appeared to have been marked 24 years; at the same distance passed a black walnut, 2 poles on my left, in Baldwin's line, but, owing to the decayed state of said tree, I could not ascertain how long it had been marked; 183 poles, passed an elm, marked as a line, and also with the letters eP, standing 19 links on my left; continued my course to Spencer's orchard, and fell 30 links to the east of the stone at K, and 2 poles west of the stone at B. I then proceeded to examine said marked line of Baldwin's, represented on on the diagram thus —. —. —, and found that it run directly from the the redbuds above mentioned to the stone at B. After this, I proceeded, at the request of the defendant, to the beech at C, and, upon a particular examination, I found that said beech stands 19 links westwardly from the marked line 3, 4, and 8 links northerly from Dark's line. Had the line from 3 to 4 been run straight, it would have run within 8 links of the beech, but on the contrary it seems to have been slightly curved, thereby leaving said beech considerably on the west side of the marked line. I then examined the mark trees in Dark's line as far as I could see them each way from said beech, and found the beech to stand 16 links northerly from an average line, leaving an equal number of marked trees on each side thereof. I then proceeded to examine the beech at C, and found that the upper beech on the south side had been marked 24 years or thereabouts, and that the lower mark on the same side had been made apparently 26 years; the two middle marks were so much injured by worms and consequent decay, that it was impossible to determine their age with any degree of certainty.

Surveyed and protracted between the 22d day of July, 1822, and the 1st day of August following, by

A. C. LOOKER,
Surveyor for Ross county.

The depositions referred to in the aforegoing diagram are inserted in a previous bill of exceptions, commencing in page 29. This diagram appears to be the one amended by order of the court.

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DUNCAN MCARTHUR, plaintiff in error, *vs.* LESSEE OF WESLEY SHIPLEY PORTER, defendant in error.

This day the record on the writ of error in this cause being docketed by the plaintiff in error, the plaintiff in error by his counsel suggests that the record made and returned is defective in this, "that during the progress of the cause in the court below, an order of survey had been made, directed to —— Looker, surveyor of Ross county, in the State of Ohio, where the lands in question lie, who made out a survey and report, and returned the same to court, which being found defective, the said Looker, with leave of the court, made out and returned an amended survey and report, which was used on the trial instead of the former; and that the clerk has in the record returned, as part of the first and second bills of exception, the first instead of the last or amended survey and report;" and this suggestion being supported by the affidavit of Thomas Scott, Esq., and the certificate of the clerk following the third bill of exceptions,"

On motion of the plaintiff, by his counsel, it is ordered that a certiorari do issue, directing the clerk of the circuit court to certify a better record in this respect, if the rules of the court and papers on file in the said cause enable him to do so.

The State of Ohio, Ross county, ss.—Before me, the undersigned, a justice of the peace in and for the county aforesaid, personally appeared Thomas Scott, who, being of lawful age, and first duly sworn, deposeth and saith, that he, as a practising attorney of the seventh circuit court of the United States' district of Ohio, was employed by General Duncan McArthur to defend an action of ejectment brought against him in said court by the lessee of Wesley Shipley Porter, a citizen and resident of the State of Maryland, to recover a tract of land situate on the north fork of Paint creek, in the county of Ross, and State of Ohio aforesaid; that, pursuant to an order of said court, a resurvey of the premises in controversy was executed by Allison C. Looker, then surveyor of the county last aforesaid, and connected plats and descriptions of said premises returned to said court. Upon inspecting said connected plats and descriptions, it was discovered that the descriptions in said connected plats were (so far as respected the claim of defendant McArthur) radically defective. That this affiant, as attorney for the said defendant, applied to and obtained an order of said court, directing said surveyor to amend his said returns. That, pursuant to that order, the surveyor amended three of his said returns, but, owing either to accident or design, the fourth was not amended. This affiant is confident that on the first trial in said circuit court, none but the three amended plats and descriptions were used as evidence to the jury; the fourth plat, being unamended, was not referred to for any purpose. This affiant was not of counsel for the said defendant on the last trial by jury in the said court, but was present in court during a part of said trial, and has been informed, and verily believes his information to be correct, that none but the three amended plats and descriptions were used as evidence on that trial. This affiant further states, that he has inspected the record made out by the clerk of said circuit court pursuant to the second writ of error, and finds that the clerk has in the first bill of exceptions taken on the last trial inserted a copy of the unamended plat and description, not used in evidence on either the first or second trials by jury, in-

stead of inserting one of the amended plats and descriptions, which was used in evidence. This affiant called upon the clerk, and informed him of his error, and requested him to rectify the error; but the clerk declined so to do, observing that he had but lately come into office, and did not know the facts of the case, and that he had inserted the unamended copy pursuant to the instructions of Porter's counsel.

This affiant further states, that the clerk has erred in making out the record of the second bill of exceptions, taken on the last trial, in this, to wit: instead of inserting in that bill a true copy of one of the amended plats and diagrams, and the depositions made part of the return, he has merely referred to the unamended plat and descriptions copied into the first bill of exceptions. The third bill of exceptions contains one of the amended plats and descriptions, and is therefore so far correct; but the record of said third bill of exceptions is defective, inasmuch as it does not include the depositions taken on the execution of said resurvey, and which constitute a part of the said surveyor's return thereof.

The clerk's certificate at the end of the record is erroneous in this, that it states the transcript of the record, judgment, and proceedings, made out in pursuance to the writ of error, (at least such appears to be the legal intendment of the certificate,) was made out on the 10th December, 1829; whereas the record in said cause was not completed until after the fifteenth day of last month. And further this deponent saith not.

THOMAS SCOTT.

Sworn to and subscribed before me, this 20th day of February, in the year 1830.

THOMAS ORR, *J. P.* [SEAL.]

LESSEE OF WESLEY S. PORTER
vs.
DUNCAN MCARTHUR. } *Ejectment.*

Judgment at July term, A. D. 1829, on which a writ of error was issued from the Supreme Court of the United States, and a transcript of the record certified accordingly.

In obedience to the command of the annexed writ of certiorari, directed to the Judges of the circuit court of the United States for the district of Ohio, the copies of the first and second bills of exceptions filed in and made a part of the record in the above mentioned cause, are certified to the Supreme Court of the United States, in the words and of the tenor following, to wit:

LESSEE OF WESLEY S. PORTER
versus
DUNCAN MCARTHUR. } *In ejectment.*

Be it remembered, that, before the jury were empannelled in this cause, the defendant's counsel moved the court to permit him to withdraw the former entry, whereby he was made defendant in the room of the casual ejector, for all the premises described in the plaintiff's declaration, and pleaded to issue, and now to enter himself defendant for the following parcel only, appearing on the report and diagram of A. C. Looker, surveyor of Ross county, made by order of this court, and filed in this cause, viz: the lands between a right line from the point K to the point V, a right line from the said point V to the point C, and a right line from the said point C to the

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said point K, the beginning of the said parcel, all appearing on the said diagram; as to which parcel he asked leave to enter into the common rule, plead to issue, and proposed to go to trial; but the court then and there refused to give leave to withdraw the said former plea: to which opinion and refusal of the court the counsel of the defendant excepts, and prays that the same exception be sealed and enrolled according to law, and made part of the record, which is done accordingly.

JOHN McLEAN, [SEAL.]
22*d July*, 1829. J. W. CAMPBELL, [SEAL.]

Which said diagram is in the words and figures following, to wit: [*See original, page 53a.*]

United States' Seventh Circuit Court.

JOHN STILES, ex dem. of WESLEY SHIPLEY PORTER, plaintiff,
against
DUNCAN McARTHUR, defendant.
} *Ejectment.*

In pursuance of an order of the above court, which is herewith enclosed, and agreeable to previous notice given to the defendant, I proceeded, on Monday, the 22d day of July, 1822, (both parties being present,) to survey and lay off the lands in controversy in the above suit. First, agreeable to the directions of the plaintiff, beginning at the point marked A on the diagram annexed, where four sugar trees formerly stood, agreeable to the testimony of Michael Thomas, Francis Baldwin, James Porter, and John A. Fulton, whose depositions, marked No. 1 and 2, relative thereto, are herewith enclosed; which sugar trees are called for as the beginning corner of Nicholas Taliaferro's survey No. 2,217, under which the plaintiff claims. A sugar tree is yet standing at or near said point, marked as a corner tree, from which I took a block, and found it to have been marked twenty-seven years, including the present. I then run N. 79° E., 110 poles, to a stone at B; the ground now cleared and enclosed in Jesse Spencer's orchard, shewn to me as the point where three dogwoods and an elm formerly stood, by Francis Baldwin, James Porter, and Michael Thomas, whose depositions relative thereto are herewith enclosed, marked No. 3 and 4. I then run N. 17° 37' W., 771 poles; at 160 poles, passed a hickory marked as a line tree, four poles and two-tenths on my left; which hickory and other trees on my left in said line (from which I took blocks) appeared to have been marked 24 years, including the present; at 180 poles entered Francis Baldwin's field; at 432 poles passed out of the same, and crossed the lands claimed by the defendant, to a beech (at C) in the line of William Dark's survey No. 1,445, of 1,010 acres; which beech has the appearance of four hacks or marks on three sides thereof, corresponding with the lines of Dark's said survey, and also with the lines running from K to C; which beech is referred to in the deposition of Michael Thomas, marked No. 5. About one pole easterly from the beech an old line crosses Dark's line, the course of which is about N. 28° W., and is represented by the dotted line from 3 to 4. From the beech at C, in Dark's line, claimed by plaintiff as one of the corners of Nicholas Taliaferro's survey No. 2,217, I took the bearing of a beech, marked as a line tree, and found it to be north 35 links distant, from which beech a block was taken, which

proved to have been marked 29 years, including the present year. From thence I run with Dark's line (correcting the course) N. 70° 37' W., 330 poles, to a hickory and two dogwoods growing from one root, on the side of a hill, at D. Several of the trees in this last line I discovered had been marked at two several times, exhibiting four hacks on each side of said trees; the first or oldest marks appeared to have been made 27 or 28 years since; the last or youngest marks appeared to have been made 24 years since. The dogwoods and hickory at D were shewn to me by James Manary, James Porter, and Michael Thomas, whose depositions relative thereto are herewith enclosed, marked No. 6. I then run the upper line of Taliaferro's said survey, and was accompanied by the defendant no further than the point where the old lost line, running from B or K to P, crosses the upper line of Taliaferro's survey at O, and found it to be S. 52° 30' W., 314 poles, crossing the north fork of Paint creek at 256 poles, where a maple and sugar tree is called for at E, referred to in the deposition of James Porter, marked No. 7, herewith enclosed; thence I run S. 45½ E., 46 poles, to two sugar trees at F; thence S. 39½ W., 60 poles, to two sugar trees, two beeches, and two dogwoods, at H (two of the dogwoods and one sugar tree are dead;) thence S. 8° 16' E., 45 poles, to two sugar trees and two beeches at I. The last three corners at F, H, I, correspond exactly with the calls of the patent for Taliaferro's survey aforesaid, except that the last corner does not stand in the line of Francis Coleman's survey, as is represented in said patent. I then run S. 50° 50' E., 875 poles, crossing the north fork at 566 poles, to the beginning at A, and found by computation that the survey contains 2,140 acres. The last line from I to A appears to have been marked 25 years, including the present.

I then, at the request of the defendant, proceeded to the point K, the most westerly corner or stone in Jesse Spencer's orchard, shewn by the defendant as the most southerly and beginning corner of his survey No. 6,188, of 200 acres, in the name of Peter Manifold, and is referred to in the deposition of John A. Fulton, marked No. 3, and herewith enclosed. I then run with the line of Manifold's survey No. 6,188, N. 35 W., 337 poles; at about 80 poles, examined a blue ash in our line, and found it to have been marked 26 years. The line in which the ash appeared to stand bore to our left gradually, until it was two or three poles distant. Shortly after, I discovered on my right what I supposed to be the line of Manifold's survey aforesaid, which line continued on our right, from two to three poles distant, until I arrived opposite two hickories and an ironwood at L, southeasterly corner to Peter Manifold's survey No. 6,236, in the line of said Manifold's survey No. 6,188. I then run N. 53 E., 3 poles and 15 links, to said corner at L, and continued with the line of survey No. 6,188 and 6,236, N. 34° 30' W., 503 poles, passing through the improvements of James Porter, Robert McDill, Joseph and Jacob McDill, as I was informed, and also through some of the improved land of the defendant, to a white oak and sugar tree standing, and an elm stump, at M, shewn to me by the defendant as the northwesterly corner of his survey No. 6,188, in the name of Peter Manifold. From the corner at L to the corner at M, I discovered no marks whatever of the proper description, although part of said line run through timbered land, in which many of the trees appeared to have been cut down and removed. I then, at the request of the plaintiff, continued the same course N. 34° 30' W., 135 poles, to Taliaferro's up-

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per line at N; at 92 poles passed a beach 4 poles on my right, variously marked with chops, hacks and blazes, together with the appearance of an Indian cut in the bark; the point N is 35 poles, S. 52° 30' W., from the point D. From N, I run S. 52° 30' W., 41½ poles, to O, where the old line, shewn by General Manary, and referred to in the depositions of said Manary and Michael Thomas, marked No. 8, crosses the upper line of Taliaferro's survey, as claimed by the plaintiff. I then run N. 36° 18' W., 80 poles, along an old marked line, to a sugar tree standing on the bank of a small drain marked as a line tree, at P, which line appeared to have been marked 27 years, including the present. I then returned to the white oak, sugar tree, and elm stump, at M, and run N. 52° E., 83 poles, to where a small ash is called for as the northeasterly corner of survey No. 6,188, at which place there is now marked a small ash and white oak, at R. The residue of the lines of said survey were protracted agreeably to the calls of the patent for said survey, which patent bears date October 12, 1812, and is herewith enclosed. I then returned to the point at S, in a line run from the point K, as I was informed by John Evans, former surveyor for Ross county, according to the course given in the patent for Taliaferro's survey No. 2,217, for the second line, and run N. 31° 30' W., 102 poles, to a stake in Dark's line at T, said to have been set by Benjamin Hough, formerly deputy surveyor for Ross county. I then returned on the last mentioned line S. 31° 30' E., 70 poles, and run N. 58½ E., 5 2/10 poles, to the point where it is said a beech formerly stood, marked as a corner, agreeable to the deposition of Isaac Davis, whose deposition, marked No. 9, is herewith enclosed; which point is represented by the letter V on the plat annexed. I then went to the beech at C, and run with Dark's line S. 70° 37' E., 168 poles, to a white oak, hickory, and elm, (the elm down) at X, corner to William Dark's survey No. 1,445, of 1,010 acres, and in the line of Ferdinand Oniel's survey No. 509; thence S. 74 W., 126 poles, to three hickories, two of them down and gone, at 2. I then proceeded to ascertain the bearing of the line from 3 to 4, and found it to be N. 29° 8' W., passing near the beech at C, to two hickories and a sugar tree at 5, from which corner an old line bears N. 71 E. From examination, this corner, and the lines coming to and running from it, appear to have been marked 29 years, including the present. I then proceeded, at the request of the defendant, to the lower corner, on the bank of Paint creek, of Mayo Carrington's survey No. 529, and came to Thomas Lewis's survey No. 2,216, represented on the plat by the figure 6, and run with the course of the last mentioned survey N. 50 W., 28 poles, to the figure 7, from which the stone at A bears N. 70 E., 43 links. If the beginning of Taliaferro's survey should be established in the lower line of Carrington's survey No. 529, agreeable to the course of his line from corner to corner, it would fall at the point represented by the figure 8; which point is S. 75 W., 5 or 6 poles from the place pointed out by the witnesses.

Agreeable to the directions of the defendant, I protracted the line from the beech at C, and extended it to Jesse Spencer's orchard, which is represented by the dotted line C, 10, which line I examined, and found it to have been marked 24 years, including the present; which marked line continues from C until within 15 poles of the intersection of Lewis's line at 10, and found that it intersected Lewis's line about 6 poles west of the stone at B, and about 2 poles west of the stone at K. I then proceeded to a point where three redbuds formerly stood, as shewn to me by Francis Baldwin

as the northeasterly corner of the 167 acres of land which he purchased of George Porter; the redbuds are now entirely gone; from which point I run S. 31 E., 200 poles, being immediately at the commencement on Baldwin's marked line; at 149 poles I had departed from the marked line, leaving it on my left 39 links; at 182 poles passed an ash 16 links on my left, which appeared to have been marked 24 years; at the same distance passed a black walnut, 2 poles on my left, in Baldwin's line, but, owing to the decayed state of said tree, I could not ascertain how long it had been marked; at 183 poles, passed an elm, marked as a line, and also with the letters C P, standing 19 links on my left; continued my course to Spencer's orchard, and fell 30 links to the east of the stone at K, and 2 poles west of the stone at B. I then proceeded to examine said marked line of Baldwin's, represented on the diagram thus —.—.—, and found that it run directly from the redbuds above mentioned to the stone at B. After this, at the request of the defendant, I proceeded to the beech at C, and, upon a particular examination, I found that said beech stands 19 links westwardly from the marked line 3, 4, and 8 links northerly from the most northerly marked trees in Dark's line. Had the line from three to four been run straight, it would have passed within eight links of the beech, but on the contrary it seems to have been slightly curved, thereby leaving said beech 19 links on the west side of the marked line. I then examined the marked trees in Dark's line, as far as I could see them, each way from said beech, and found the beech to stand 16 links northerly from an average line, leaving an equal number of marked trees on each side thereof. I then proceeded to examine the beech at C, and found that the upper hack on the south side had been marked 24 years or thereabouts, and that the lower mark on the same side had been made apparently 26 years; the two middle marks were so much injured by worms and consequent decay, that it was impossible to determine their age with any degree of certainty.

Surveyed and protracted between the 22d day of July, 1822, and the 1st day of August following, by

A. C. LOOKER,
Surveyor for Ross county.

The second bill of exceptions is in the words and figures following, to wit:

PORTER'S lessee, *vs.* DUNCAN MCARTHUR.

Be it remembered, that, upon the trial of the issue joined in this, in order to prove title in himself for part of the premises in the plaintiff's declaration mentioned, the defendant offered to give in evidence an exemplification of a judgment recovered before the late general court of the Territory of the United States northwest of the river Ohio, held at Marietta, in the now State of Ohio, on the third Tuesday of October, 1802, by Nicholas Taliaferro against Peter Porter, administrator of George Porter, deceased, in debt, which is in the following words and figures, to wit:

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Pleas held at Marietta, in the Territory of the United States northwest of the river Ohio, on the third Tuesday of October, in the year of our Lord one thousand eight hundred and two, before the honorable the Judges of the general court for our said Territory.

NICHOLAS TALIAFERRO
vs.
PETER PORTER, adm'r of George Porter, deceased. } *In debt.* *In the general court.*

Declaration. Territory of the United States northwest of the river Ohio. October term, 1802, *of the general court held at Marietta.*

TALIAFERRO
vs.
PORTER, adm'r. } *Debt.*

Nicholas Taliaferro complains of Peter Porter, in custody, &c., administrator of all the goods and chattels, rights and credits, of George Porter, deceased, (formerly of Baltimore county, in the State of Maryland, but late of Ross county, in the territory aforesaid,) in a plea that he, the said Peter, administrator as aforesaid, render to him, the said Nicholas, five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, current money of the United States, which he, the said Peter, unjustly detains from him, the said Nicholas; for that whereas the said George Porter, in his lifetime, to wit, on the 8th day of May, in the year one thousand seven hundred and ninety-nine, by his certain writing obligatory, signed with his hand, and sealed (according to the custom and law of the State, to wit, Kentucky, where the same was made) with his seal, and to the court now shown, the date of which is the same day and year aforesaid, acknowledged himself to be held and firmly bound unto the said Nicholas Taliaferro, his heirs, executors, and administrators, in the sum of five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six and two-thirds cents, for which payment he bound himself, his heirs, executors, and administrators: nevertheless the said George Porter in his lifetime, and the said Peter after the death of the said George, the said five hundred and sixty pounds, equal to eighteen hundred and sixty-six dollars and sixty-six cents and two-thirds of a cent, although often required, to wit, on the twenty-fifth day of December, in the year 1800, and often since, have not, nor hath either of them, paid to the said Nicholas Taliaferro, the said sum, or any part thereof, but have hitherto refused; and the said Peter, administrator as aforesaid, doth yet deny to pay him the same, and unjustly detains the same, to the damage of the said Nicholas four hundred dollars; and therefore he produces this suit.

JOHN S. WILLS, *for pltff.*

Nicholas Taliaferro puts in his place John S. Wills to prosecute.

NICHOLAS TALIAFERRO.

J. DOE,
R. ROE, } *Pledges, &c., this suit.*

At which day the plaintiff came; and the defendant, being solemnly called, came not; whereupon the said plaintiff prays judgment. Therefore it is considered by the court here that the said plaintiff do recover his debt aforesaid, to wit, $, by reason of the premises, against the said Peter

Porter, administrator of George Porter, deceased; as also $ more, in damages, as well for the detention of that debt as for his costs and charges by him expended in that behalf; and that the said plaintiff have execution thereof against the estate of the said George Porter, deceased.

I do hereby certify the aforesaid to be a true copy, taken from the records of this office. In testimony whereof, I place my signature, and annex the seal of office, the 20th day of August, in the year of our Lord one thousand eight hundred and three.

[SEAL.] WM. McFARLAND, *Clk. S. C. P. T.*

An exemplification of a certain writ of execution issued thereon, of October term of said court, in the year 1802, in these words and figures, viz:

Territory of the United States northwest of the river Ohio, sct. The United States to the sheriff of Ross county, greeting:

We command you that of the goods and chattels of Peter Porter, administrator of George Porter, deceased, in your bailiwick, which remains in his hands to be administered, you cause to be made nine hundred and thirty-three dollars and thirty-three cents, debt, which Nicholas Taliaferro, before us, in our general court, recovered against him as administrator; as also one hundred and twenty-one dollars eighty-three cents, in damages, as well for the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said Peter is convicted, as appears to us of record, if so much goods and chattels can be found; if not, then that you make the same of his lands and tenements in your bailiwick, of the said George Porter, deceased; as also fifty cents more for this writ of fi. fa. and leva. fa.; and have that money ready before us at Cincinnati, in our general court, on the third Tuesday of March next, to render to the said Nicholas Taliaferro his debt and damages aforesaid, and satisfy yourself your own fees; and have then there this writ.

Witness the Hon. John Cleves Symmes, Esq., one of the Judges of the general court, at Marietta, in our term of October, 1802.

WM. McFARLAND, *Clk. G. C.*

NICHOLAS TALIAFERRO *vs.* PETER PORTER, adm'r of George Porter, dec'd. } *Fi. fa. et leva. fa.*

Debt	$933 33
Interest	102 66⅔
	$1,035 99⅔
Costs G. C.	18 16⅔
Interest from 19th October, 1802, to 19th March	25 90
Sheriff's fees and costs of jury	41 77½
Execution	50

Returnable to March term, 1803.

And of the sheriff's return thereon in these words, viz: Nulla bona. Levied upon 452 acres of land, condemned to be sold by a jury of twelve men, empannelled and sworn according to law. Not sold for want of time.

JER. McLENE, *Shff. Ross co.*

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The State of Ohio, Ross county, sct. I, John McDougal, clerk of the supreme court for said county, do hereby certify that the foregoing is a correct copy of the execution, and endorsement thereon, now filed in my office. In witness whereof, I have hereunto set my hand, and have affixed my seal of office, at Chillicothe, this 31st December, 1808, and the seventh year of this State.

[SEAL.] JOHN McDOUGAL, *Clk. S. C. R. C.*

Also, an exemplification of a certain writ of venditioni, issued upon the said return, in these words, to wit:

The State of Ohio to the Sheriff of the county of Ross:

You are hereby commanded that you expose to sale those lands and tenements of George Porter, deceased, which, according to our command, you have taken into your hands, and which remain unsold, as you have certified to the Judges of the supreme court for the State of Ohio, to satisfy Nicholas Taliaferro nine hundred and thirty-three dollars and thirty-three cents, debt, which in our late general court he recovered against Peter Porter, administrator of the said George Porter, deceased; as also one hundred and twenty-one dollars and eighty-three cents, and twenty-five cents, as well for the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said Nicholas recovered execution against the said Peter, as administrator, as aforesaid, by virtue of a judgment in the said general court; and that you have the same before the Judges of the supreme court next to be holden within and for the said county of Ross, on the first day of the term, then and there to render unto the said Nicholas of the debt, damages, and costs aforesaid.

Witness Return J. Meigs, jr., presiding Judge of our said court, this 15th day of November, 1803.

WM. R. DICKINSON, *Clk.*

Together with the sheriff's endorsement and return on the last mentioned writ, in these words, to wit:

NICHOLAS TALIAFERRO *vs.* GEORGE PORTER'S admr. } *Ve. exponas.*

Debt - - -	$933 33	
Damages - - -	102 66⅔	Sold 452 acres land to D. McArthur, for $1,521. December 7th, 1803.
Costs G. C. - -	18 16⅔	
Do S. C. - - -	25	JER. McLENE.
Interest from 19th Oct. 1802		
Shff's fees, as endorsed on fi. fa.	41 77½	I have the money ready.
	1,177 52½	JER. McLENE.

The State of Ohio, Ross county, sct.

I, John McDougal, clerk of the supreme court for Ross county, do hereby certify that the foregoing is a true copy from the original execution, and the several endorsements thereon, filed in my office. In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this 3d January, 1809, and 7th year of this State.

[L. S.] JOHN McDOUGAL, *Clk. S. C. R. C.*

And also an official copy of a deed executed by the sheriff to him, bearing date the 19th December, 1803, for 452 acres, more or less, of the lands in the said declaration contained; which land was sold to him, the said defendant, by the said sheriff, in pursuance of the said executions, and which land appears on A. C. Looker's report and diagram, filed in this cause, to be bounded by red lines; but the court being of opinion that by the judgment, writs, returns, levies, sale, and deed aforesaid, the lessor was not divested of his title, rejected the said evidence; to which opinion of the court the defendant, by his counsel, excepts, and prays that such his exceptions be sealed, enrolled, and made part of the record, according to law: all which is done accordingly.

JOHN McLEAN, [SEAL.]
J. W. CAMPBELL, [SEAL.]

Sheriff's deed referred to in the last above recited bill of exceptions, in the words and of the tenor following, to wit:

"This indenture, made this nineteenth day of December, in the year of our Lord one thousand eight hundred and three, between Jeremiah McLene, sheriff of Ross county, of the one part, and Duncan McArthur, of the county aforesaid, and State of Ohio, of the other part, witnesseth, that whereas Nicholas Taliaferro, lately before the Judges of the general court of the territory northwest of the Ohio, viz. at Cincinnati, at the term of October, in the year of our Lord one thousand eight hundred and two, did recover by judgment of said court against Peter Porter, administrator of all and singular the goods, chattels, rights, and credits of George Porter, deceased, as well a certain debt of nine hundred and thirty-three dollars and thirty-three cents, as also one hundred two dollars sixty-six and two-thirds cents, for the detention of that debt, and other sums for his costs and charges by him about his suit in that behalf expended, whereof in the said court remaining more fully appears; and whereas the said Nicholas prosecuted on the judgment aforesaid, out of the court aforesaid, a certain writ of the territory, viz. a levari facias, to the sheriff of the said county of Ross directed, by which said writ it was commanded the said sheriff that of the goods and chattels, lands and tenements, which belonged to the said George Porter, deceased, at the time of his death, in the hands of the said Peter Porter, administrator as aforesaid, in his bailiwick, he should cause to be made the debt, damages, and costs aforesaid, if so much the said Peter had in his hands to be administered, and that he should have those moneys before the Judges aforesaid, at their next term, on a certain day now past, to render unto the said Nicholas for his debt, damages, and costs aforesaid, and also that writ; and whereas the said sheriff, by virtue of the said writ of levari facias, to him directed as aforesaid, did return that he had taken and secured a tract of land containing four hundred and fifty-two acres, situated on the north fork of Paint creek, there being no goods and chattels of the said George in his bailiwick in the hands of the said Peter to be administered, which tract of land not being sufficient by the rents and profits in five years to satisfy debt, damages, and costs aforesaid, as has been certified by an inquest of twelve lawful men summoned and sworn for that purpose; and whereas the said Nicholas afterwards prosecuted on the judgment and return aforesaid, out of the supreme court of the State of Ohio for the county of Ross aforesaid, a certain writ of the State, called a venditioni exponas, to the sheriff aforesaid directed; and whereas the said Jeremiah McLene, sheriff of Ross

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county aforesaid, in pursuance of the said writ of venditioni exponas, and according to the law in such cases made and provided, and the provisions and requisitions therein contained, having legally advertised and made known the same, did, on the seventeenth day of December, in the year one thousand eight hundred and three, in the town of Chillicothe, in the county aforesaid, expose to sale by public vendue or auction the aforesaid tract or parcel of land, with the appurtenances to the same belonging, and all the estate, right, title, property, claim, and demand whatsoever of him, the said George Porter, at the time of his death, into and over the same; and wherefore the said Duncan McArthur did then and there bid for the same one thousand five hundred and twenty-one dollars, and no person bidding more, the said tract of land and premises, with the appurtenances, was in due manner openly struck off and sold to the said Duncan McArthur, for the said sum of one thousand five hundred and twenty-one dollars; therefore, to confirm the said purchase to the said Duncan McArthur, so as aforesaid made, this indenture witnesseth, that the said Jeremiah McLene, sheriff of Ross county aforesaid, for and in consideration of the sum of one thousand five hundred and twenty-one dollars, to him in hand paid by the said Duncan McArthur, the receipt whereof is hereby acknowledged, and by virtue of a law of the territory aforesaid, hath given, granted, bargained and sold, conveyed and confirmed, unto the said Duncan McArthur, his heirs and assigns for ever, all that said tract or parcel of land, containing four hundred and fifty-two acres, lying in the county of Ross, and on both sides of the north fork of Paint creek, being all that part of Nicholas Taliaferro's survey number two thousand two hundred and seventeen which said George Porter possessed at the time of his death, adjoining the southwesterly lines of Andrew Pontias's one hundred and fifty acres, southwesterly and southeasterly lines of Joshua Porter's two hundred and forty acres, and the westerly lines of the survey on which said McArthur now lives, and the northeasterly, northwesterly, and southwesterly of James and Robert McDill's one hundred and forty acres, and from said McDill's southerly corner southwestwardly with James Porter's line to the southwesterly line of Taliaferro's said survey, thence with said line northwestwardly, and the other lines of the original survey, to the lower line of the survey on which William Rodgers now lives, and adjoining the same, containing, as aforesaid, four hundred and fifty-two acres, be the same more or less, with all the privileges and appurtenances to the same belonging, or in any wise appertaining, with all the estate, right, title, interest, property, claim, and demand, of the said George Porter, at the time of his death, in, to, and over the same, and every part thereof: to have and to hold all and singular the above granted and bargained premises and appurtenances to the said Duncan McArthur, his heirs and assigns, to the only proper use, benefit, and behoof of him, the said Duncan McArthur, his heirs and assigns for ever, in as free and ample a manner as I, the said Jeremiah McLene, sheriff aforesaid, by virtue of the authority aforesaid, might, could, or ought to convey the same.

In witness whereof, I, the said Jeremiah McLene, sheriff of Ross county, have hereunto set my hand and seal, at Chillicothe, the day and year first within written.

JER. McLENE, [SEAL.]
Shff. Ross county.

Signed, sealed, and delivered, in the presence of us:
MICHAEL THOMAS, LEVI SIAWELL.

State of Ohio, Ross county, ss.—Personally appeared before me, a justice of the peace in and for said county, the within named Jeremiah McLene, sheriff of said county, and acknowledged the above signing and sealing to be his act and deed, for the use and purposes therein mentioned. Given under my hand and seal this 10th day of February, 1804.

WILLIAM CREIGHTON. [SEAL.]

Ce'd 13th Feb. 1804.

The State of Ohio, Ross county, ss.—I, Samuel Tagart, recorder in and for the county aforesaid, do hereby certify that the foregoing is a true copy of the deed from Jeremiah McLene, sheriff of said county, to Duncan McArthur, as it remains of record in book G, pages 107, 108, 109, and 110.

In testimony whereof, I have hereunto set my name, and affixed the seal of my said office, at Chillicothe, this 27th day of October, 1827.

[SEAL.] SAML. TAGART,
Recorder.

United States' Seventh Circuit Court.

JOHN STILES, ex dem. WESLEY SHIPLEY PORTER, plaintiff, *against* DUNCAN MCARTHUR, defendant. } *Ejectment.*

In pursuance of an order of the above court, which is herewith enclosed, and agreeable to previous notice given to the defendant, I proceeded on Monday, the 22d day of July, 1822, (both parties being present,) to survey and lay off the land in controversy in above suit. First, agreeable to the directions of the plaintiff, beginning at the point marked A on the diagram annexed, where four sugar trees formerly stood, agreeably to the testimony of Michael Thomas, Francis Baldwin, James Porter, and John A. Fulton, whose depositions marked 1 and 2, and relative thereto, are herewith enclosed; which sugar trees are called for as the beginning corner of Nicholas Taliaferro's survey, No. 2,217, under which the plaintiff claims. A sugar tree is yet standing at or near said point, marked as a corner tree, from which I took a block, and found it to have been marked twenty-seven years, including the present. I then run N. 79° E., 110 poles, to a stone at B; the ground now cleared and enclosed in Jesse Spencer's orchard; shewn to me as the point where three dogwoods and an elm formerly stood, by Francis Baldwin, James Porter, and Michael Thomas, whose depositions relative thereto are herewith enclosed, and marked 3 and 4. I then run N. 17° 37', W. 771 poles; at 160 poles passed a hickory marked as a line tree four poles and two tenths on my left, which hickory and other trees on my left in said line, from which I took blocks, appeared to have been marked 24 years, including the present; at 180 poles, entered Francis Baldwin's field; at 432 poles, passed out of same and crossed the lands claimed by the defendants to a beach at C, in the line of William Dark's survey, No. 1,445, of 1,010 acres, which beech has the appearance of four hacks or marks on three sides thereof, corresponding with the lines of Dark's said survey, and also with the line running from K to C; which beech is referred to in the deposition of Michael Thomas, marked No. 5. About 1 pole easterly from the beech, an old line crosses Dark's line, the course of which is about N. 28° W. and is represented by the dotted from 3 to 4. From the beech at C in Dark's line, claimed by plaintiff as one of the corners of Nicholas

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Taliaferro's survey No. 2,217, I took the bearing of a beech, marked as a line tree, and found it to be N. 35 links distant, from which beech a block was taken, which proved to have been marked 29 years, including the present year. From thence I run with Dark's line, (correcting the course) N. 70° 37' W. 330 poles, to a hickory and two dogwoods growing from one root, on the side of a hill, at D. Several of the trees in this last line, I discovered, had been marked at two several times, exhibiting four hacks on each side of said trees; the first or oldest marks appeared to have been made 27 or 28 years since; the last or youngest marks appeared to have been made 24 years since. The dogwoods and hickory at D were shewn to me by James Manary, James Porter, and Michael Thomas, whose depositions relative thereto are herewith enclosed, marked No. 6. I then run the upper line of Taliaferro's said survey, and was accompanied by the defendant no farther than the point where the old lost line, running from B, or K, to P, crosses the upper line of Taliaferro's survey, at O, and found it to be S. 52°. 30' W. 314 poles, crossing the north fork of Paint creek at 256, where a maple and sugar tree is called for, at E, referred to in the deposition of James Porter, marked no 7, herewith enclosed; thence I run S. 45½° E. 46 poles, to two sugar trees at F; thence S. 39½° W. 60 poles, to two sugar trees, two beeches and two dogwoods, at H, (two of the dogwoods and one sugar tree are dead;) thence S. 8° 16' E. 45 poles, to two sugar trees, and two beeches, at I. The last three corners, at F, H, I, correspond exactly with the calls of the patent for Taliaferro's survey aforesaid, except that the last corner does not stand in the line of Francis Coleman's survey, as is represented in said patent. I then run S. 50° 50' E. 875 poles, crossing the N. fork at 560 poles, to the beginning at A, and found by computation that the survey contains 2,140 acres. The last line, from I to A, appears to have been marked 25 years, including the present. I then, at the request of the defendant, proceeded to the point K, the most westerly corner or stone, in Jesse Spencer's orchard, shewn to the defendant as the most southerly and beginning corner of his survey No. 6,188, of two hundred acres, in the name of Peter Manifold, and is referred to in the deposition of John A. Fulton, marked No. 3, and herewith enclosed. I then run with the line of Manifold's survey No. 6,188, N. 35° W. 337; at about 80 poles examined a blue ash in one line, and found it to have been marked 26 years: the line in which the ash appeared to stand bore to our left gradually, until it was two or three poles distant; shortly after, I discovered on my right what I suppose to be the line of Manifold's survey aforesaid, which line continued on our right, from two to three poles distant, until I arrived opposite to two hickories and an ironwood at L, southeasterly corner to Peter Manifold's survey No. 6,236, in the line of said Manifold's survey No. 6,188. I then run N. 55° E. 3 poles and 15 links, to said corner at L, and continued with the line of survey; No. 6,188 and 6,236, N. 34° 30' W. 503 poles, passing through the improvements of James Porter, Robert McDill, Joseph and Jacob McDill, as I was informed, and also through some of the improved land of the defendant, to a white oak and sugar tree standing, and an old elm stump, at M, shewn to me by the defendant as the northwesterly corner of his survey No. 6,188, in the name of Peter Manifold. From the corner at L to the corner at M, I discovered no marks whatever of the proper description, although part of said line run through timbered land, in which many of the trees appeared to have been cut down and removed. I then, at the request of the plaintiff, continued the same course N. 34° 30' W. 135

poles, to Taliaferro's upper line at N.; at 92 poles, passed a beech 4 poles on my right, variously marked with chops, hacks, and blazes, together with the appearance of an Indian cut in the bark. The point N. is 35 poles, S. 52° 30' W. from the point D. From N. I run S. 52° 30' W. 41½ poles, to O, where the old line shewn by General Manary, and referred to in the depositions of said Manary and Michael Thomas, (marked No. 8,) crosses the upper line of Taliaferro's survey, as claimed by the plaintiff. I then run N. 36° 18' W. 80 poles, along an old marked line, to a sugar tree standing on the bank of a small drain, marked as a line tree, at P, which line appeared to have been marked 27 years, including the present. I then returned to the white oak, sugar tree, and elm stump, at M, and run N. 52° E. 83 poles, to where a small ash is called for as the northeasterly corner of survey No. 6,188, at which place there is now marked a small ash and white oak, at R. The residue of the lines of said survey were protracted agreeable to the calls of the patent for said survey, which patent bears date Oct. 12, 1812, and is herewith enclosed. I then returned to the point at S. in a line run from the point K, as I was informed, by John Evans, former surveyor of Ross county, according to the course given in the patent, for Taliaferro's survey No. 2,217, for the second line, and run N. 31° 30' W. 102 poles, to a stake in Dark's line at T, said to have been set by Benjamin Hough, formerly deputy surveyor for Ross county. I then returned on the last mentioned line S. 31°30' E. 70 poles, and run N. 58½ E. $5\frac{2}{10}$ poles, to the point where it is said a beech formerly stood, marked as a corner, agreeable to the deposition of Isaac Davis, whose deposition, marked No. 9, is herewith enclosed, which point is represented by the letter V on the plat annexed. I then went to the beech at C, and run with Dark's line S. 70° 37' E. 168 poles, to a white oak, hickory, and elm (the elm down,) at X, corner to William Dark's survey No. 1,445 of 1,010 acres, and in the line of Ferdinand Oniel's survey No. 509; thence S. 74° W. 126 poles, to three hickories, two of them down and gone, at 2. I then proceeded to ascertain the bearing of the line from 3 to 4, and found it to be N. 29° 8' W., passing near the beech at C, to two hickories and a sugar tree at 5, from which corner an old line bears N. 71° E. From examination this corner, and the lines coming to and going from it, appear to have been marked 29 years, including the present. I then proceeded, at the request of the defendant, to the lower corner, on the bank of Paint creek, of Mayo Carrington's survey No 529, and corner to Thomas Lewis's survey No. 2,216, represented on the plat by the figure 6, and run with the course of the last mentioned survey N. 50° W. 28 poles to the figure 7, from which the stone at A bears N. 70° E. 43 links. If the beginning of Taliafero's survey should be established in the lower line of Carrington's survey No. 529, agreeable to the course of his line from corner to corner, it would fall at the point represented by the figure 8, which point is S. 75° W. five or six poles from the place pointed out by the witnesses. Agreeable to the directions of the defendant, I protracted the line from the beech at C, and extended it to Jesse Spencer's orchard, which is represented by the dotted line C, 10, which line I examined, and found it to have been marked 24 years, including the present; which marked line continues from C until within about 15 poles of the intersection of Lewis's line at 10, and found that it intersected Lewis's line about six poles west of the line at B, and about two poles west of the stone at K. I then proceeded to a point where three redbuds formerly stood, as shewn to me by Francis Baldwin as the northeasterly corner of the 167 acres of land which

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ne purchased of George Porter; the redbuds are now entirely gone; from which point I run S. 31° E. 200 poles, (being immediately at the commencement on Baldwin's marked line:) at 149 poles, I had departed from the marked line, leaving it on my left 39 links; at 182 poles, passed an ash 16 links on my left, which appeared to have been marked 24 years; at the same distance passed a black walnut 2 poles on my left, in Baldwin's line, but, owing to the decayed state of said tree, I could not ascertain how long it had been marked; at 183 poles, passed an elm marked as a line, and also with the letters GP, standing 19 links on my left. Continued my course to Spencer's orchard, and fell 30 links east of the stone at K, and two poles west of the stone at B. I then proceeded to examine said marked line of Baldwin's, represented on the diagram thus: —.—.—.—.—, and found that it run directly from the redbuds above mentioned to the stone at B. After this, at the request of the defendant, I proceeded to the beech, at C, and upon a particular examination, I found that said beech stands 19 links westwardly from the marked line, 3, 4, and 8 links northerly from the most northerly marked trees in Dark's line. Had the line from 3 to 4 been run straight, it would have passed within 8 links of the beech; but on the contrary, it seems to have been slightly curved, thereby leaving said beech 19 links on the west side of the marked line. I then examined the marked trees in Dark's line, as far as I could see them, each way from said beech, and found the beech to stand 16 links northerly from an average line, leaving an equal number of marked trees on each side thereof. I then proceeded to examine the beech at C, and found that the upper hack on the south side, had been made 24 years, or thereabouts, and that the lower mark on the same side had been made apparently 26 years: the two middle marks were so much injured by worms, and consequent decay, that it was impossible to determine their age with any degree of certainty.

Surveyed and protracted between the 22d day of July, 1822, and the first day of August following, by

A. C. LOOKER,
Surveyor for Ross county.

THE UNITED STATES OF AMERICA, DISTRICT OF OHIO, sct.

I, William Miner, clerk of the seventh circuit court of the United States within and for the district aforesaid, do hereby certify that the aforegoing bills of exceptions, enrolled and made a part of the record in the cause of the lessee of Wesley S. Porter *vs.* Duncan McArthur, together with all the papers referred to in said bills of exceptions, (except the depositions mentioned in the return of A. C. Looker, Surveyor of Ross county, which have been heretofore certified to the Supreme Court United States, in this cause,) are truly and correctly copied from the records of the court aforesaid.

In testimony whereof, I have hereunto set my name, and affixed the seal of the court aforesaid, at Columbus, this 23d day of July, A. D. 1830, and in the 55th year of American independence.

[L. S.] WILLIAM MINER,
Clk. 7th C. C. U. S. D. O.

Rec'd the clerks. fees for this transcript from Gen. McArthur.
W. MINER, *clk.*